

**H.R. 985, CONCRETE MASONRY PRODUCTS
RESEARCH, EDUCATION, AND PROMOTION ACT
OF 2015**

HEARING
BEFORE THE
SUBCOMMITTEE ON COMMERCE, MANUFACTURING,
AND TRADE
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS
FIRST SESSION

JULY 10, 2015

Serial No. 114–65



Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE

97–854

WASHINGTON : 2016

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON ENERGY AND COMMERCE

FRED UPTON, Michigan

Chairman

JOE BARTON, Texas

Chairman Emeritus

ED WHITFIELD, Kentucky

JOHN SHIMKUS, Illinois

JOSEPH R. PITTS, Pennsylvania

GREG WALDEN, Oregon

TIM MURPHY, Pennsylvania

MICHAEL C. BURGESS, Texas

MARSHA BLACKBURN, Tennessee

Vice Chairman

STEVE SCALISE, Louisiana

ROBERT E. LATTA, Ohio

CATHY McMORRIS RODGERS, Washington

GREGG HARPER, Mississippi

LEONARD LANCE, New Jersey

BRETT GUTHRIE, Kentucky

PETE OLSON, Texas

DAVID B. MCKINLEY, West Virginia

MIKE POMPEO, Kansas

ADAM KINZINGER, Illinois

H. MORGAN GRIFFITH, Virginia

GUS M. BILIRAKIS, Florida

BILL JOHNSON, Missouri

BILLY LONG, Missouri

RENEE L. ELLMERS, North Carolina

LARRY BUCSHON, Indiana

BILL FLORES, Texas

SUSAN W. BROOKS, Indiana

MARKWAYNE MULLIN, Oklahoma

RICHARD HUDSON, North Carolina

CHRIS COLLINS, New York

KEVIN CRAMER, North Dakota

FRANK PALLONE, JR., New Jersey

Ranking Member

BOBBY L. RUSH, Illinois

ANNA G. ESHOO, California

ELIOT L. ENGEL, New York

GENE GREEN, Texas

DIANA DeGETTE, Colorado

LOIS CAPPs, California

MICHAEL F. DOYLE, Pennsylvania

JANICE D. SCHAKOWSKY, Illinois

G.K. BUTTERFIELD, North Carolina

DORIS O. MATSUI, California

KATHY CASTOR, Florida

JOHN P. SARBANES, Maryland

JERRY McNERNEY, California

PETER WELCH, Vermont

BEN RAY LUJAN, New Mexico

PAUL TONKO, New York

JOHN A. YARMUTH, Kentucky

YVETTE D. CLARKE, New York

DAVID LOEBSACK, Iowa

KURT SCHRADER, Oregon

JOSEPH P. KENNEDY, III, Massachusetts

TONY CARDENAS, California

SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE

MICHAEL C. BURGESS, Texas

Chairman

JANICE D. SCHAKOWSKY, Illinois

Ranking Member

LEONARD LANCE, New Jersey

Vice Chairman

MARSHA BLACKBURN, Tennessee

GREGG HARPER, Mississippi

BRETT GUTHRIE, Kentucky

PETE OLSON, Texas

MIKE POMPEO, Kansas

ADAM KINZINGER, Illinois

GUS M. BILIRAKIS, Florida

SUSAN W. BROOKS, Indiana

MARKWAYNE MULLIN, Oklahoma

FRED UPTON, Michigan (*ex officio*)

YVETTE D. CLARKE, New York

JOSEPH P. KENNEDY, III, Massachusetts

TONY CARDENAS, California

BOBBY L. RUSH, Illinois

G.K. BUTTERFIELD, North Carolina

PETER WELCH, Vermont

FRANK PALLONE, JR., New Jersey (*ex*

officio)

CONTENTS

	Page
Hon. Michael C. Burgess, a Representative in Congress from the State of Texas, opening statement	1
Prepared statement	2
Hon. Janice D. Schakowsky, a Representative in Congress from the State of Illinois, opening statement	3
Hon. Marsha Blackburn, a Representative in Congress from the State of Tennessee, opening statement	4
WITNESSES	
Ellen Herbst, Chief Financial Officer and Assistant Secretary for Administration, U.S. Department of Commerce	5
Prepared statement	8
Answers to submitted questions	
Franklin Rusco, Director, Natural Resources and Environment—Energy Issues, U.S. Government Accountability Office	10
Prepared statement	12
Answers to submitted questions	
Major Ogilvie, General Manager, Ready Mix USA, LLC	37
Prepared statement	40
Answers to submitted questions	
Kate Offringa, President, Vinyl Siding Institute Incorporated	43
Prepared statement	46
Answers to submitted questions	
Kent Waide, President, Ruby Concrete Company	51
Prepared statement	53
Answers to submitted questions	
SUBMITTED MATERIAL	
Statement of the Mason Contractors Association of Greater Chicago	66
Statement of Back Brook Masonry	69
Statement of Featherlite Building Products and Acme Brick Company	72
Statement of the National Association of Homebuilders	75

H.R. 985, CONCRETE MASONRY PRODUCTS RE- SEARCH, EDUCATION, AND PROMOTION ACT OF 2015

FRIDAY, JULY 10, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND
TRADE,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:00 a.m., in room 2123, Rayburn House Office Building, Hon. Michael C. Burgess, M.D., (chairman of the subcommittee) presiding.

Present: Representatives Burgess, Lance, Blackburn, Harper, Guthrie, Pompeo, Kinzinger, Bilirakis, Brooks, Mullin, Schakowsky, Cardenas, and Welch.

Staff Present: Graham Dufault, Counsel, CMT; Melissa Froelich, Counsel, CMT; Kirby Howard, Legislative Clerk; Paul Nagle, Chief Counsel, CMT; Olivia Trusty, Professional Staff, CMT; Michelle Ash, Minority Chief Counsel, Commerce, Manufacturing, and Trade; Lisa Goldman, Minority Counsel; and Adam Lowenstein, Minority Policy Analyst.

OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BURGESS. The subcommittee on Commerce, Manufacturing, and Trade will come to order. The chair will recognize himself for 5 minutes for the purposes of an opening statement.

And good morning, and I want to welcome everyone to today's hearing on Representative Guthrie's bipartisan legislation, H.R. 985, the Concrete Masonry Products Research, Education, and Promotion Act of the 2015. This measure authorizes the establishment of a national checkoff program for concrete masonry products and directs the Department of Commerce to provide administrative oversight support throughout the implementation of the program.

Many of us are familiar with the advertisements from checkoff programs that support agricultural commodities, such as "Beef. It's What's for Dinner" and "The Incredible, Edible Egg." A unique component of these programs is that they are established at the request of a particular industry and are financed by that industry as well. Manufacturers and producers of a commodity agree to pay an assessment, which is then pooled to support a more efficient, coordinated marketing approach aimed at strengthening the market

position of the commodity in the United States and in foreign markets.

In addition to marketing and advertising expenditures, these funds are also used to finance research and development ventures that help advance modern product lines and other innovative uses of the commodity in question.

Today's hearing on H.R. 985 will give the subcommittee an opportunity to examine the status of the concrete masonry products industry in the United States and abroad and to learn about the effectiveness of past and current research, educational, and promotional activities taken by the industry. The hearing will give us an opportunity to examine the potential benefits from the advancement of concrete masonry products in the marketplace. We will also examine the potential impact on other industries competing in the building material space.

Additionally, I look forward to understanding how the Department of Commerce would fulfill its administrative and oversight role. I want to thank Representative Guthrie for the efforts to create this bipartisan bill that seeks to grow the economy, create jobs, and protect consumers.

I would ask witnesses for their indulgence this morning as we actually—the full committee has legislation on the floor of the full House this morning and some members may be in and out during the amendment process on the Cures bill. So I thank the witnesses in advance for their testimony and look forward to an engaging discussion on this legislation.

And I would be happy to yield to Mr. Guthrie if he has comments he wishes to make this morning.

[The prepared statement of Mr. Burgess follows:]

PREPARED STATEMENT OF HON. MICHAEL C. BURGESS

Good morning. I want to welcome everyone to today's hearing on Representative Guthrie's bipartisan legislation, H.R. 985, the "Concrete Masonry Products, Research, Education, and Promotion Act of 2015." This measure authorizes the establishment of a national "check-off" program for concrete masonry products and directs the Department of Commerce to provide administrative and oversight support throughout the implementation of the program.

Many of us are familiar with advertisements from check-off programs that support agricultural commodities, such as "Beef. It's What's for Dinner" or "The Incredible Edible Egg."

A unique component of these programs is that they are established at the request of a particular industry and are financed by that industry too. Manufacturers and producers of a commodity agree to pay an assessment, which is pooled together to support a more efficient, coordinated marketing approach aimed at strengthening the market position of the commodity in the United States and in foreign markets. In addition to marketing and advertising expenditures, those funds are also used to finance research and development ventures that help advance modern product lines and other innovative uses of the commodity.

Today's hearing on H.R. 985 will give us an opportunity to examine the status of the concrete masonry products industry in the United States and abroad, and learn about the effectiveness of past and current research, educational, and promotional activities undertaken by the industry. The hearing will give us an opportunity to examine the potential benefits from the advancement of concrete masonry products in the marketplace. We will also examine the potential impact on other industries competing in the building materials space.

Additionally, I look forward to understanding how the Department of Commerce would fulfill its administrative and oversight role.

I thank Representative Guthrie for his leadership on this issue and his efforts to create a bipartisan bill that seeks to grow the economy, create jobs, and protect con-

sumers. I would ask the witnesses for their indulgence this morning as we have a very important Cures bill on the floor and many of our Members will be in and out. I thank the witnesses for their testimonies and I look forward to engaging discussion on this legislation.

Mr. GUTHRIE. Thank you, Mr. Chairman. Thank you for having this hearing. And I want to thank everybody for being here today and am pleased to support H.R. 985.

This is an issue that my colleagues and I have worked on for 3 years, and I would especially like to thank my friend from Florida, Congresswoman Kathy Castor, who has worked very hard on this effort. The bill is truly bipartisan, with over 160 cosponsors.

I am sure that just about every member of this subcommittee, maybe every Member of Congress has heard from concrete masonry producers or contractors in their respective districts. Most of these businesses are small, locally owned, and so they are greatly entwined with their communities and would stand to benefit greatly from this program.

H.R. 985 is a bipartisan approach to creating a commodity research and education program and will allow for nationwide cooperation and accelerated job growth. By allowing block producers to pool their resources, these local manufacturers will have a way to improve their products, resulting in increased energy efficiency and safety and increased marketing options.

I want to thank the subcommittee chairman for bringing this important legislation before the subcommittee, and I encourage my colleagues to support this bill. And I yield back to the chairman.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back.

The chair recognizes the subcommittee ranking member, Ms. Schakowsky of Illinois, for 5 minutes for an opening statement, please.

OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you, Mr. Chairman, for holding this hearing on H.R. 985, the Concrete Masonry Products Research, Education, and Promotion Act. I look forward to hearing from our witnesses on this legislation.

Let me apologize at this point. I am going to leave for a very short time to go to the floor on an amendment that I am proposing.

Commodity checkoffs have been used for decades to support the sales and improvement of many products. So far, all of those programs have been overseen by the USDA or Department of Energy, from "Got Milk" to cotton, "The Fabric of Our Lives." We are all familiar with these programs and the products they promote.

With the creation of softwood lumber checkoff, other building industries, like hardwood lumber, natural stone, have made efforts to create their own checkoff program, seeking parity with other building materials. H.R. 985 would create a concrete masonry checkoff program at the Department of Commerce.

Over the past few years I have heard regularly from the concrete masonry industry contractors, workers, and my colleagues about the importance of a checkoff program. Just yesterday I met with

a constituent named Jim O'Connor, who has worked tirelessly to advance this bill. Advocates stress that a checkoff would support jobs, improve the quality of concrete products, and reduce adverse environmental impacts of concrete production. I am very interested in pursuing these goals, and I look forward to hearing from the industry representatives about how this legislation would get us there.

I also want to make sure that the Commerce Department, which has never managed a checkoff, has the resources and know-how to oversee this kind of program. I want to learn from the Government Accountability Office about the pitfalls of check-offs and how those can be avoided. And I want to understand the perspective of those representing other building materials. I look forward to hearing the testimony of our nonconcrete industry witnesses today to better understand those issues.

I think we all share the same objectives: To grow jobs, improve the quality and safety of the building materials we use, and heighten consumer awareness. I want to make sure that this legislation is successful in leveraging all of those benefits while limiting any negative impacts that might be anticipated. I know that my colleagues share that goal.

Again, I look forward to hearing from our witnesses, and I yield back the balance of my time.

Mr. BURGESS. The chair thanks the gentlelady. The gentlelady yields back.

The chair recognizes the vice chair of the full committee, Ms. Blackburn, for the purpose of an opening statement.

You are recognized.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman. And I want to thank our witnesses for being here and giving their time.

Checkoff programs, we all know how they have worked. We are curious about expanding this to the concrete industry and how this is going to work to help with jobs growth and with industry development.

Now, interestingly enough, when I was in the state senate in Tennessee in the late 1990s I worked with a group in the concrete industry in our state to help found the Center of Excellence at Middle Tennessee State University. And it was the first such center that we had in the south, and it has been so highly successful. I was pleased to serve as the graduation speaker for the first graduating class from the Concrete Industry Management program.

We continue to see the benefits of this. And I think, as you look at the advancement in this industry, the safety of materials, the options in concrete in these materials, that having a checkoff program works just hand in glove with what we see from the MTSU program.

So I welcome you all. I am going to have a couple of questions for you. As the gentlelady from Illinois said, we have legislation from this committee on the floor this morning, so we are going to be up and down. So we ask for your understanding in that.

Mr. Chairman, I yield back.

Mr. BURGESS. The gentlelady yields back. The chair thanks the gentlelady.

Seeing no other members seeking time for an opening statement, that will conclude opening statements. The chair would remind members that, pursuant to committee rules, all members' opening statement will be made part of the record.

I now want to thank our witnesses for being here today and taking the time to testify before the subcommittee. Again, today's subcommittee hearing will consist of two panels. Witnesses on each panel will have the opportunity to give an opening statement of 5 minutes, followed by a round of questions from members. Once we conclude with questions on the first panel, we will take a brief recess to set up for the second panel.

Our first panel today consists of two witnesses, Ms. Ellen Herbst, the Chief Financial Officer and Assistant Secretary for Administration, the United States Department of Commerce.

Good morning. Thank you for being here.

And Mr. Franklin Rusco, Director, Natural Resources and Environment Energy-Issues at the United States Government Accountability Office office.

We will begin our first panel with Ms. Herbst. You are recognized for 5 minutes for an opening statement, please.

STATEMENTS OF ELLEN HERBST, CHIEF FINANCIAL OFFICER AND ASSISTANT SECRETARY FOR ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE; AND FRANKLIN RUSCO, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT-ENERGY ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

STATEMENT OF ELLEN HERBST

Ms. HERBST. Thank you. And good morning, Chairman Burgess, Ranking Member Schakowsky, and members of the committee. Thank you for inviting me to testify today on proposed legislation to establish a commodity research and promotion program, also known as a checkoff program, for concrete masonry products.

I am Ellen Herbst. I am the Department's CFO and Assistant Secretary for Administration. I oversee the establishment and execution of departmental policies and procedures for administrative functions affecting program operations in Commerce's operating units. In my role, I seek to strengthen the Department's capacity to achieve its objectives, maximize return on program investments, and deliver quality and timely service.

As part of the administration's economic team, the Secretary of Commerce serves as the voice of all U.S. business. The Department of Commerce promotes job creation, economic growth, sustainable development, and improved standards of living for all Americans by working in partnership with businesses, universities, communities, and our Nation's workers.

The Department's "Open for Business" Agenda is a bold strategic plan and policy blueprint focused on expanding trade and investment, unleashing government data for economic benefit, spurring innovation, protecting the environment, and executing these prior-

ities with operational excellence as careful stewards of taxpayer dollars.

Our bureaus are hard at work every day on behalf of American businesses and workers. For example, the International Trade Administration is charged with promoting the export of U.S. goods and services in foreign markets and ensuring fair trade and compliance with trade laws and agreements. Through its administration of the patent and trademark laws, the U.S. Patent and Trademark Office protection enables the protection of new ideas and spurs innovation, creativity, and the development of new technology globally.

The Economic Development Administration plays a critical role in fostering regional economic development efforts in communities across the Nation. And finally, with a varied research portfolio, world class facilities, national networks, and international partnerships on standard and technology, the National Institute of Standards and Technology works to support U.S. Industry and innovation.

As we understand the bill, H.R. 985 would establish the Concrete Masonry Products Board upon approval of a referendum by producers of masonry products made from concrete. The Board would develop research and education programs, as well as programs to promote concrete masonry products in domestic and foreign markets. Funding for those activities would be derived from mandatory assessments on manufacturers based on the number of masonry units sold each year.

The bill directs the Secretary of Commerce to organize and hold the initial referendum, produce an order, appoint the Board, and then would require the Secretary of Commerce to assume an ongoing oversight and enforcement role.

While the Department supports the efforts of the masonry industry to coordinate research, education, and promotion activities for the industry, we have identified a number of questions or challenges to implementation of this program within the Commerce Department.

First, although the legislation provides that the cost of the Department's activities in carrying out this program are intended to be reimbursed using assessments collected by the Board, it is unclear to us at this point how that process would work in practice.

In addition, the Department does not currently have the expertise, staff, or resources to establish and administer a checkoff program. Such a program office would need to be established and located within one of the Department's operating units. There are no bureaus within the Department that currently administer a commodity checkoff or similar program, nor does such a program fit within the current mandates or mission of our operating units. And the oversight and enforcement responsibilities proposed by the bill, as we understand them, would be quite extensive.

So, an option would be for the concrete masonry industry to organize voluntarily cooperative arrangements to encourage generic marketing, education, and research activities.

We also note that other competing construction material producers might oppose the creation of such a program that could be viewed as unfairly favoring one type of construction material over

another. This could lead to requests from other competing construction material producers to establish their own checkoff program, resulting in an expanding number of checkoff programs that would be administered and housed within the Department of Commerce.

I appreciate the committee's time and attention. I appreciate the invitation. And I welcome any questions. Thank you.

[The prepared statement of Ms. Herbst follows:]

Testimony of Ellen Herbst
Chief Financial Officer and Assistant Secretary for Administration
U.S. Department of Commerce
before the
Subcommittee on Commerce, Manufacturing and Trade
Energy and Commerce Committee
House of Representatives
on
H.R. 985, the "Concrete Masonry Products Research, Education, and Promotion Act of
2015"
July 10, 2015

Good morning Chairman Burgess, Ranking Member Schakowsky, and Members of the Committee. Thank you for inviting me to testify today on H.R. 985, the "Concrete Masonry Products Research, Education, and Promotion Act of 2015."

My name is Ellen Herbst. I am the Department of Commerce's Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA). I oversee the establishment and execution of Departmental policies and procedures for administrative functions affecting program operations in Commerce's operating units. This includes budget, human resources, procurement, travel, and strategic planning and performance measurement. In my role, I seek to strengthen the Department's capacity to achieve its objectives, maximize return on program investments, and deliver quality, timely service.

As part of the Administration's economic team, the Secretary of Commerce serves as the voice of all U.S. business. The Department of Commerce promotes job creation, economic growth, sustainable development and improved standards of living for all Americans by working in partnership with businesses, universities, communities and our nation's workers. The Department's "Open for Business" Agenda is a bold strategic plan and policy blueprint focused on expanding trade and investment, unleashing government data for economic benefit, spurring innovation, protecting the environment, and executing these priorities with operational excellence as careful stewards of taxpayer dollars.

Our bureaus are hard at work every day on behalf of American businesses and workers. For example, the International Trade Administration is charged with promoting the export of U.S. goods and services in foreign markets, and ensuring fair trade and compliance with trade laws and agreements. Through its administration of the patent and trademark laws, the U.S. Patent and Trademark Office enables the protection of new ideas and spurs innovation, creativity and the development of new technology globally. The Economic Development Administration plays a critical role in fostering regional economic development efforts in communities across the nation. With a varied research portfolio, world-class facilities, national networks and international partnerships

on standards and technology, the National Institute of Standards and Technology works to support U.S. industry and innovation.

As we understand the bill, H.R. 985 would establish the Concrete Masonry Products Board (Board), upon approval of a referendum by producers of masonry products made from concrete. The Board would develop research and education programs as well as programs to promote concrete masonry products (CMP) in domestic and foreign markets. Funding for those activities would be derived from mandatory assessments on CMP manufacturers based on the number of masonry units sold each year. The bill directs the Secretary of Commerce to organize and hold the initial referendum and would require the Secretary of Commerce to assume a significant ongoing oversight and enforcement role. Among those responsibilities would be issuing orders to manufacturers of concrete masonry products; conducting subsequent referenda among manufacturers required to pay an assessment; appointing members of the board; approving all programs or projects of research, education, or promotion proposed by the Board; holding hearings and issuing rulings on petitions filed with the Secretary; assessing civil penalties, issuing cease and desist orders, and holding hearings on violations of orders or regulations issued by the Secretary; performing investigations and holding administrative hearings to determine whether violations of the legislation have occurred; and issuing regulations necessary to carry out the legislation.

While the Department supports the efforts of the masonry industry to coordinate research, education, and promotion activities for the industry, we have identified a number of challenges to implementation of this program within the Commerce Department. First, although the legislation provides that the cost of the Department's activities in carrying out this program are intended to be reimbursed using assessments collected by the Board, it is unclear how that process would work in practice. In addition, the Department does not have the expertise, staff, or the resources to establish and administer a commodity research and promotion program, also known as a checkoff program. Such an office would need to be established and located within one of the Department's bureaus. There are no bureaus within the Department that currently administer commodity checkoff or similar programs. Nor does such a program fit within the current mandates or missions of our bureaus. The oversight and enforcement responsibilities proposed by the bill would be extensive.

An option would be for the concrete masonry industry to organize voluntary cooperative arrangements to encourage generic marketing, education and research activities. We also note that other competing construction material producers might oppose creation of such a program that could be viewed as unfairly favoring one type of construction material over others. This could lead to requests from other competing construction material producers to establish their own checkoff programs resulting in an ever-expanding number of checkoff programs that could end up housed within the Department.

I appreciate the Committee's time and attention and welcome any questions.

Mr. BURGESS. The chair thanks the gentlelady. The gentlelady yields back.

The chair recognizes Mr. Rusco 5 minutes for your opening statement, please.

STATEMENT OF FRANKLIN RUSCO

Mr. RUSCO. Thank you, Mr. Chairman, Ranking Member Schakowsky, and members of the subcommittee. Thank you for the opportunity to discuss GAO's prior work on checkoff programs, and particularly some observations from two such programs, the Propane Education and Research Council, or PERC, and the National Oil Heat Research Alliance, or NORA.

There are currently more than 20 checkoff programs for agricultural commodities. These programs allow industries to set aside a fraction of the wholesale price of these commodities to be used by the programs for a variety of purposes. Checkoff programs are typically geared toward increasing the success of the industries that fund them through activities including research and development, consumer education, and promotion of U.S. products, domestically and abroad.

For agricultural commodity checkoff programs, USDA's Agricultural Marketing Service has administrative and oversight responsibilities and is reimbursed by the program's producer-contributor boards for these functions.

Authorizing language for checkoff programs varies, but frequently contains guidance about the prioritization of activities performed by the programs. For example, Congress may specify a minimum proportion of program funds that go to research and development, consumer education, or other functions. Authorizing language may also prohibit certain activities, such as lobbying.

In 2010, GAO evaluated two such programs, PERC and NORA, that were authorized by Congress in the Propane Act of 1996 and the Oil Heat Act of 2000. These acts authorized certain activities, including research and development, safety training, and consumer education, and placed restrictions on other activities, including certain lobbying activities.

Under the authorizing statutes, DOE and Commerce were given certain authority to implement the programs. Congress also specified key procedural, administrative, and spending requirements to administer these programs. PERC's authority does not sunset, but NORA's has and was most recently reauthorized in 2014.

Our evaluation of PERC and NORA found that some PERC and NORA activities appeared to meet the requirements of the acts, but certain other activities, such as activities involving Congress or politically affiliated entities, raised issues about whether they were covered by the acts' specific lobbying restrictions. We also found that neither act provided guidance on what constitutes influencing legislation or elections, which made it unclear if PERC or NORA was meeting the intent of Congress.

In addition, Congress had not specified what proportions of program funds would go to the three key activities. For example, PERC and NORA each spent a relatively small share of funds on research and development, 8 and 6 percent, respectively, despite the fact that research and development had been a key area of con-

gressional interest as the two laws were debated prior to enactment. Because the acts lacked specific guidance in these areas, it was unclear whether the programs were doing what Congress intended.

Finally, we found that Federal oversight of PERC and NORA by DOE, as called for in the acts, was limited compared to the oversight of agricultural checkoff programs by the Agricultural Marketing Service.

Based on these findings, we suggested that, prior to reauthorizing NORA, Congress may wish to: one, specify any prioritization of activities that Congress intends to be undertaken; two, specify a Federal oversight role by requiring DOE to monitor and oversee the expenditures of the PERC and NORA funds; and three, to establish a specific enforcement mechanism and authorize DOE to refer any potential violations of law to appropriate enforcement entities.

In its reauthorization of NORA in 2014, Congress took actions consistent with all three suggestions, thereby creating greater accountability and oversight for NORA. PERC, which does not sunset, however, has not been subject to these changes to date.

I hope these observations are useful as you consider the Concrete Masonry Products Research, Education, and Promotion Act of 2015. GAO does offer assistance with legislative language, if that is desirable. We have some of our general counsel who are very versed on these programs and would be happy to help if we can.

Thank you. I will be happy to answer any questions you may have.

[The prepared statement of Mr. Rusco follows:]

United States Government Accountability Office



Testimony

Before the Subcommittee on
Commerce, Manufacturing, and Trade,
Committee on Energy and Commerce,
House of Representatives

For Release on Delivery
Expected at 9:00 a.m. ET
Friday, July 10, 2015

CHECK-OFF PROGRAMS

Observations from the Propane and Heating Oil Programs

Statement of Frank Rusco, Director,
Natural Resources and Environment



Highlights of GAO-15-769T, a testimony before the Subcommittee on Commerce, Manufacturing, and Trade, Committee on Energy and Commerce, House of Representatives

Why GAO Did This Study

Congressionally authorized research and promotion programs, also known as check-off programs, may be established under federal law at the request of their industries. These programs are designed to increase the success of businesses that produce and sell certain commodities, such as milk and beef. To fund such programs, producers set aside a fraction of the wholesale cost of a product and deposit the monies into a common fund.

In June 2010, GAO reported on two such programs, PERC and NORA, for the propane and oilheat industries (GAO-10-583). Legislation is currently being considered for a check-off program for the concrete and masonry industry. For this testimony, GAO focused on (1) mandatory functions and priorities for PERC and NORA programs and projects, (2) whether PERC and NORA activities were covered by certain legal requirements, and (3) federal oversight of PERC and NORA. For the 2010 report, GAO reviewed relevant laws, financial statements, annual reports, meeting minutes, and other reports. GAO also interviewed officials from the departments of Energy and Commerce and the private sector. GAO updated legislative information in July 2015.

GAO's June 2010 report suggested that Congress consider clarifying certain requirements and specifying priority ranking, expenditures, and a DOE oversight role. When Congress reauthorized NORA in 2014, it amended the Oilheat Act by, among other things, taking actions on GAO's suggestions.

View GAO-15-769T. For more information, contact Frank Rusco at (202) 512-3841 or ruscof@gao.gov.

July 12, 2015

CHECK-OFF PROGRAMS

Observations from the Propane and Heating Oil Programs

What GAO Found

As GAO reported in June 2010, the Propane Education and Research Act of 1996 (the Propane Act) and the National Oilheat Research Alliance Act of 2000 (the Oilheat Act), which authorized the establishment of the Propane Education and Research Council (PERC) and National Oilheat Research Alliance (NORA), specified the following areas as mandatory functions and priorities:

- **Research and development:** The Propane Act requires PERC to develop programs for research and development of clean and efficient propane utilization equipment. The Oilheat Act directs similar oilheat-related research and development and directs NORA to fund demonstration projects.
- **Safety and training/education and training:** Both acts require development of programs to enhance consumer and employee safety and training. PERC refers to this area as "safety and training," and NORA refers to it as "education and training."
- **Public/consumer education:** The Propane Act directs PERC to develop projects to inform and educate the public about safety and other issues associated with the use of propane. Similarly, the Oilheat Act directs NORA to develop programs that provide information to assist consumers and other persons in making evaluations and decisions regarding oilheat. Such activities have included developing radio, television, and print advertising.

To fund their operations, the acts require PERC and NORA to assess each gallon of odorized propane gas or heating oil sold at \$0.004 and \$0.002, respectively.

GAO found that some PERC and NORA activities appeared to meet the requirements of the acts, but certain other activities raised issues. For example, activities involving Congress or politically affiliated entities raised issues about whether they were covered by the acts' specific lobbying restrictions. Even if these activities were permitted, issues remained about whether Congress anticipated that assessment funds would be used to fund them, particularly when PERC and NORA classified this spending as "consumer education"—one of the functions required by the acts. Other issues GAO identified related to whether Congress anticipated that PERC and NORA would allocate the majority of their funding to education activities over the past decade (more than half), while allocating relatively little financial support to research and development (8 percent for PERC and less than 6 percent for NORA). When the laws were debated and before they were enacted, research and development had been a key area of congressional interest and ultimately was reflected as both a mandatory "function" and a high-focus "priority" in the final version passed by Congress.

GAO found limited federal oversight of PERC and NORA. As of June 2010, the Department of Energy had not used the oversight authority granted by the Propane and Oilheat acts, such as by reviewing budgets or making recommendations to PERC and NORA, as authorized by law. This lack of oversight was long-standing. For example, in a 2003 report GAO had found that DOE's oversight of PERC was lacking and recommended corrective action.

Chairman Burgess, Ranking Member Schakowsky, and Members of the Subcommittee:

Thank you for the opportunity to discuss our prior work on congressionally authorized research and promotion programs, also known as check-off programs,¹ as the Subcommittee considers proposed legislation for a check-off program for the concrete and masonry industry.² As you know, check-off programs may be established by Congress under federal law at the request of their industries, with the goal of increasing the success of the businesses and farmers that produce and sell certain commodities. To fund check-off programs, a fraction of the wholesale cost of a product is set aside by the producer and deposited into a common fund to be used to benefit producers and consumers. For example, more than 20 such programs are in place for agriculture commodities, including milk, beef, pork, and cotton, and each program is administered by a board or committee. According to an October 2008 Congressional Research Service report, the Department of Agriculture's Agricultural Marketing Service (AMS) has some administrative and oversight responsibilities for those agriculture programs, but the producer-contributor boards that run them must reimburse AMS for such costs.³

My testimony focuses on the results of our June 2010 report on the Propane Education and Research Council (PERC) and National Oilheat Research Alliance (NORA)—two federally-authorized check-off programs.⁴ Congress authorized the creation of these two national entities and provided the U.S. Department of Commerce (Commerce) and

¹The term "check-off" refers to the way that the promotion and research programs are funded: A small amount is deducted from the revenues that producers and/or other members of an industry receive from the sale of their products.

²H.R. 985, Concrete Masonry Products Research, Education, and Promotion Act of 2015.

³Congressional Research Service (CRS) Report to Congress, "Federal Farm Promotion ("Check-Off) Programs," Number 95-353, October 20, 2008. The CRS report focuses on free-standing generic promotion programs and generally does not cover the similar promotion activities that are part of the regulations issued in connection with marketing orders authorized by the Agricultural Marketing Agreement Act of 1937, as amended. For greater detail on all of these programs, see the Department of Agriculture-AMS website at <http://www.ams.usda.gov/>.

⁴GAO, *Propane and Heating Oil: Federal Oversight of the Propane Education and Research Council and the National Oilheat Research Alliance Should Be Strengthened*, GAO-10-583 (Washington, D.C.: June 30, 2010).

the U.S. Department of Energy (DOE) with certain related authority to implement these programs. The Propane Education and Act of 1996 (the Propane Act)⁵ and the National Oilheat Research Alliance Act of 2000 (the Oilheat Act)⁶ authorized the establishment of PERC and NORA, respectively. The Oilheat Act, as amended, is currently authorized until February 2018, and the Propane Act does not expire. PERC and NORA have provided the framework for propane and oilheat producers and marketers to establish self-help, nonfederal programs of research and development, training, safety, and consumer education activities. Both the Propane Act and the Oilheat Act outline key procedural, administrative, and spending requirements to administer these programs.

My testimony today focuses on (1) mandatory functions and priorities for PERC's and NORA's programs and projects,⁷ (2) whether PERC and NORA activities were covered by certain legal requirements in the Propane and Oilheat Acts, and (3) federal oversight of PERC and NORA. In preparing this testimony, we relied on our work supporting our June 2010 report and updates from July 2015 as a result of recent legislative changes since our report was issued.⁸ For our June 2010 report, we reviewed the Propane and Oilheat acts and PERC and NORA financial statements, annual reports, meeting minutes, and other reports. We also obtained information and views on both PERC and NORA from a wide range of officials in DOE and the Departments of Commerce and Agriculture and the private sector. More details on the scope and methodology for our work can be found in the issued report.⁹ We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions

⁵Pub. L. No. 104-284, 110 Stat. 3370 (Oct. 11, 1996), *codified at amended* at 15 U.S.C. §§ 6401-6411.

⁶Pub. L. No. 106-469, 114 Stat. 2029 (Nov. 9, 2000). NORA's authorization lapsed in 2009, but the program was reauthorized in 2014 by Pub. L. No. 113-79, 128 Stat. 649, 997 (Feb. 7, 2014), *codified at* 42 U.S.C. § 6201 note.

⁷In this report, we refer to both the programs and the organizations operating the programs as either PERC or NORA.

⁸GAO-10-583. In July 2015, we updated information concerning the Propane and the Oilheat acts since the issuance of our June 2010 report.

⁹GAO-10-583.

based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Mandatory Functions and Priorities for PERC and NORA's Programs and Projects

As discussed in our June 2010 report, both the Propane and Oilheat Acts specify three areas as mandatory functions and priorities for PERC's and NORA's programs and projects.¹⁰ The three mandatory areas are as follows:

- Research and development:** The Propane Act requires PERC to develop programs that provide for research and development of clean and efficient propane utilization equipment. The Oilheat Act directs similar oilheat-related research and development and directs NORA to fund projects in the demonstration stage of development. According to our analysis of PERC's audited financial statements, annual reports, and other financial information that they provided to us for our June 2010 report, of the about \$350.6 million collected from assessments for 1998 to 2008, PERC and its affiliated state propane associations spent \$28.1 million for research and development (8 percent). According to our analysis of NORA's audited financial statements, annual reports, and other financial information, of the more than \$107.4 million NORA collected from assessments for 2001 to 2008, NORA and the affiliated state associations spent \$6.2 million (5.8 percent) on research and development.¹¹
- Safety and training/education and training:** Both the Propane Act and the Oilheat Act require development of programs to enhance consumer and employee safety and training. PERC refers to this program area as "safety and training," and NORA refers to it as "education and training." Projects that fall into this spending category include developing employee training materials and conducting training courses for industry personnel. According to our analysis of PERC's and NORA's audited financial statements, annual reports, and other financial information that they provided to us for our June 2010 report, from 1998 to 2008, PERC and its affiliated state propane associations spent \$50.7 million for safety and training (14.5 percent),

¹⁰Both PERC and NORA also carry out additional activities.

¹¹NORA's outside accountant informed us that, of the \$107 million total, NORA had collected approximately \$103 million and had accrued receivables of \$4 million at the end of 2008. For a complete breakdown of PERC and NORA's spending, see GAO-10-583.

and from 2001 to 2008, NORA and the affiliated state associations spent \$17.8 million (16.5 percent) on education and training.

- **Public/consumer education:** The Propane Act directs PERC to develop projects to inform and educate the public about safety and other issues associated with the use of propane. Similarly, the Oilheat Act directs NORA to develop programs that provide information to assist consumers and other persons in making evaluations and decisions regarding oilheat. Such activities have included the development of radio, television, and print advertising directed at consumers and industry professionals. According to our analysis of PERC's and NORA's audited financial statements, annual reports, and other financial information that they provided to us for our June 2010 report, from 1998 through 2008, PERC spent about \$178.6 million for consumer education (50.9 percent), and from 2001 through 2008, NORA spent \$68.4 million for consumer education (63.7 percent).

To fund their operations, PERC and NORA assess each gallon of propane or heating oil, respectively.¹² Specifically, to fund PERC operations, each gallon of odorized propane gas sold is assessed

¹²Propane, also known as liquefied petroleum gas, is a by-product of both crude oil refining and natural gas processing, with approximately equal amounts of total propane produced from each process. Propane is used to power household appliances, fuel gas fireplaces and barbeque grills, and heat homes. Oilheat is a petroleum product refined from crude oil. Heating homes is the primary use for oilheat, making the demand for oilheat highly seasonal, with most of the oilheat use occurring from October through March, primarily in the Northeast.

\$0.004.¹³ To fund NORA operations, each gallon of heating oil sold is assessed \$0.002.¹⁴

While the Propane and Oilheat Acts contain certain restrictions on the types of activities PERC and NORA can undertake, the acts generally do not prohibit PERC and NORA from conducting programs or projects beyond these mandatory areas identified above, and both organizations have carried out additional activities. PERC, for example, has spent funds on agriculture and engine fuel programs. In addition, to coordinate its activities with other parties, as required by the Propane Act, PERC has established an industry programs area to provide support, data, and other services to the propane industry and maximize its impact. Likewise, in 2004 and 2005, NORA funded an oil tank training and education program for tank installers, inspectors, and insurers to address concerns about storage tanks, which NORA officials stated spanned all three mandatory areas in the statute.

¹³As propane is naturally odorless, a chemical called an odorant is added to give it a distinct odor as a means of detecting a leak. Virtually all commercial propane is odorized.

¹⁴By statute, both PERC and NORA are to give a portion of the assessments collected to state propane and oilheat associations with similar missions. The PERC and NORA state associations are private enterprises and not state government entities. Under the Propane Act, PERC is to give 20 percent of its assessments to state propane associations. According to PERC, its oversight of these funds includes a PERC Council review of a state association's proposed use for these funds and the submission of periodic and final reports from the state associations. The Oilheat Act requires NORA to give 15 percent of its assessments each year to qualified state associations, which could then request to receive any portion of the remaining 85 percent of the assessments collected in their states. NORA's oversight of state expenditures was similar to PERC's, but state associations are required by NORA to submit quarterly reports on program spending. Both PERC and NORA are also expressly authorized by their statutes to use the assessments they collect to meet general and administrative expenses.

**Certain Activities
Raised Issues about
Whether They Were
Covered by
Restrictions in the
Acts**

In our June 2010 report, we found that some PERC and NORA activities appeared to meet the requirements of the acts, but certain other activities, such as some activities involving Congress or politically affiliated entities, raised issues as to whether they were covered by the Propane and Oilheat Acts' specific lobbying restrictions. Even when we assumed that these activities were permitted, issues remained about whether Congress anticipated that assessment funds would be used for these types of activities. We also found issues concerning PERC's funding of consumer education activities after spending restrictions were triggered and NORA's monitoring of the expenditures of its funds by state associations.¹⁵

**PERC and NORA
Activities Related to
Congress and Politically
Affiliated Entities**

The Propane Act prohibits the use of PERC assessment funds for certain "lobbying" activities, specifically for "influencing legislation or elections," except for recommending to the Secretary of Energy any changes in the act or other statutes that would further the act's purposes. At the time of our June 2010 review, the Oilheat Act contained similar provisions, some of which were amended in 2014.¹⁶ However, some of PERC's and NORA's activities—particularly communications and expenditures related to Congress or to politically affiliated entities—raised issues as to whether they were covered under the acts' lobbying restrictions.

In our June 2010 report, we found, for example, that PERC paid for a grantee to attend activities associated with the Republican and Democratic national conventions, for a grantee to contribute thousands of dollars to several politically active organizations, and for a grantee to spend thousands of dollars to host Senate and House receptions. We also found that minutes of an August 2008 NORA executive committee meeting indicated that the NORA President said he was seeking state senators' support for NORA reauthorization and that a December 2008 NORA-qualified Massachusetts state association newsletter indicated that

¹⁵For a complete listing of the areas we examined and the results of our review, see GAO-10-583.

¹⁶In NORA's 2014 reauthorization, the Oilheat Act's lobbying restriction was amended to allow NORA's use of funds to provide information requested by a Member of Congress, or an official of any federal, state, or local agency, in the course of the official business of the Member or official but "lobbying" was specifically added as a prohibited activity. Pub. L. No. 113-79, § 12408, 128 Stat. 649, 1004 (Feb. 7, 2014) *codified at* 42 U.S.C. § 6201 note.

the NORA President traveled to Washington to urge both Massachusetts senators to support NORA reauthorization.

We found that neither the Propane Act nor the Oilheat Act provided guidance on what constitutes "influencing legislation or elections;" there was little pertinent legislative history; no court had addressed what this language means as used in these statutes; and other federal laws containing similar language had been interpreted in different ways. As such, it was not clear whether or not the Propane Act's or the Oilheat Act's prohibitions covered those types of activities. Even when we assumed PERC's and NORA's activities were permitted, issues remained about whether Congress anticipated that the assessment funds would be used for these activities, particularly when PERC and NORA had classified this spending as "consumer education," one of the functions that the acts require PERC and NORA to carry out. Specifically, issues remained about whether they qualified as "consumer education" under the acts. Issues also remained about whether Congress anticipated that such a high proportion of the groups' funding would go to consumer education activities (i.e., more than half), in comparison to the relatively little support given to research and development (i.e., 8 percent for PERC and less than 6 percent for NORA), which had been a key area of congressional interest as the laws were debated prior to enactment.¹⁷

Because PERC's and NORA's authorizing statutes did not provide for a particular funding level for specific activities or indicate a ranking among the activities designated as priorities, they afforded PERC and NORA wide latitude in deciding how and in what amounts they spent assessments collected. Since the legislative history of both statutes indicated that a need for research and development funding was a key factor driving the legislation, PERC's and NORA's decisions to spend over half of their funding on consumer education raised issues about whether these funds were being used as Congress anticipated. Furthermore, while some PERC and NORA activities appeared to meet statutory requirements, the lack of specificity in the language of the statutes raised issues about what activities were covered under certain provisions of the acts. In our June 2010 report,¹⁸ we suggested that as

¹⁷In June 2010, we found that research and development was a key area of congressional interest as the laws were debated prior to enactment and that ultimately was reflected as both a mandatory "function" and a high-focus "priority" when the laws were enacted.

¹⁸GAO-10-583.

Congress considers whether to reauthorize NORA or amend PERC's authorizing statute, it consider imposing greater specificity on the requirements it has established and to establish mechanisms to enhance compliance with those requirements. Specifically, we suggested that Congress should consider

- specifying any prioritization of activities it wants to be undertaken and detailing more specifically which activities are prohibited (such as some of those involving lobbying) and
- subjecting PERC's and NORA's activities to review, interpretation and approval by an independent, designated entity and specifying a federal oversight role by requiring DOE to monitor and oversee the expenditure of PERC and NORA funds.

Consistent with our suggestions, when Congress reauthorized NORA in 2014, it amended the Oilheat Act to, among other things, specify the expected range of assessments to be spent by NORA or the state associations on certain of the activities and to add some specificity to the lobbying restriction.¹⁹ With respect to PERC, although Congress made technical clarifications to the Propane Act in 2014,²⁰ it did not address the suggestions we made in 2010.

**PERC Funding of
Consumer Education
Activities after Spending
Restrictions Were
Triggered**

In our June 2010 report, we also found that PERC initially designated certain activities as "consumer education" but, when price-based restrictions on consumer education programs were triggered in 2009, it redesignated and continued the activities as "residential and commercial" matters. The Propane Act specified that if the 5-year average rolling price index of consumer grade propane exceeds a particular price threshold, PERC's activities must be restricted to research and development, training, and safety. Commerce notified PERC in August 2009 that this price composite index threshold had been exceeded. We found that, after the August notification, PERC approved three grants, including a no-cost change order to a previously approved grant. These grants initially had

¹⁹The reauthorization amended the Oilheat Act to specify how a total of not less than 85 percent of the assessments collected were to be spent on activities such as research and development. Pub. L. No. 113-79, § 12406, 128 Stat. 649, 1000 (Feb. 7, 2014), *codified at* 42 U.S.C. § 6201 note.

²⁰Pub. L. No. 113-269, 128 Stat. 2947 (Dec. 18, 2014).

been proposed and approved as consumer education grants, which would be prohibited under the restriction, and PERC amended their designation to a new program area called "residential and commercial" matters. The Propane Act did not specifically define the scope of activities permitted under the price restriction or the activities that must cease.²¹ We concluded that the resulting lack of a precise statutory line between permitted and prohibited activities created difficulty in assessing compliance with the restriction.

NORA Monitoring of State Associations

In our June 2010 report, we also found issues concerning NORA's monitoring of state oilheat associations. It was unclear during our review whether NORA's monitoring procedures were adequate to detect noncompliance among its state grantees if it occurred. The Oilheat Act required NORA to monitor the use of funds it provides to state associations and impose any terms and conditions it considers necessary to ensure compliance with the act.²² The Oilheat Act also required NORA to establish policies and procedures that conform to generally accepted accounting principles (GAAP) for auditing compliance with the act. According to NORA's President, monitoring of state associations included, among other things, policies and procedures to review state grants and disbursements and requirements in grant agreements with the state associations that specify the authorized and unauthorized use of NORA assessment funds. However, based on our review of general ledger entries, financial statements, and certain other reports and information prepared by selected state associations for our June 2010 report, we were unable to determine whether spending by state associations of NORA funds met the requirements of the Oilheat Act. For example, based on our review of the general ledger expenditures entries for 2006 to 2008, we found that hundreds of entries indicated only that a purchase was made, with no details as to the type of or reason for the purchase. We suggested that Congress consider requiring NORA funds granted to qualified state associations be segregated in separate accounts, apart from other funds collected and used by those

²¹The Oilheat Act, by contrast, contained a broad definition of "consumer education": "the provision of information to assist consumers and other persons in making evaluations and decisions regarding oilheat and other nonindustrial commercial or residential space or hot water heating fuels."

²²The Propane Act contained no similar explicit monitoring requirement for PERC.

associations. Consistent with this suggestion, in NORA's 2014 reauthorization, the Oilheat Act was amended so that as a condition of receiving funds from NORA, each state association is to deposit the funds in an account that is separate from other funds of the qualified state association.²³

Federal Oversight of PERC and NORA Has Been Limited, Unlike Federal Oversight of Agriculture Check-off Programs

In our June 2010 report, we found that the federal oversight of PERC and NORA was limited, which was in contrast to the routine federal oversight of agriculture check-off programs that had existed. DOE did not exercise its oversight authority for either PERC or NORA, and DOE officials told us that they believed that the department had no oversight role regarding either one. DOE, however, is empowered to review both organizations' annual budgets; to recommend activities and programs it deems appropriate; and, in PERC's case, to require submission of reports on compliance, violations, and complaints regarding implementation of the Propane Act. We found that although DOE is authorized to be reimbursed by PERC for the department's PERC-related oversight costs (up to the average salary of two DOE employees), DOE officials told us the department never requested reimbursement because it did not incur any oversight costs. This lack of oversight is part of a long-standing pattern. For example, in a June 2003 report, we found that DOE's oversight of PERC was lacking and recommended that the department take corrective action.²⁴ In its response to our June 2003 report, DOE stated that Commerce rather than DOE had oversight responsibility and, therefore, DOE did not act on our recommendation. In June 2010, we found that DOE's position regarding PERC remained unchanged.

Importantly, as neither the Propane nor the Oilheat Act contained a specific enforcement mechanism for any potential PERC or NORA violations, in June 2010 we concluded that any oversight program implemented by a federal agency would be hampered. As a result, in our June 2010 report,²⁵ we suggested that as Congress considers whether to

²³Pub. L. No. 113-79, § 12406 (b), 128 Stat. 649, 1000 (Feb. 7, 2014) *codified at* 42 U.S.C. § 6201 note.

²⁴GAO, *Propane: Causes of Price Volatility, Potential Consumer Options, and Opportunities to Improve Consumer Information and Federal Oversight*, GAO-03-762 (Washington, D.C.: June 27, 2003).

²⁵GAO-10-583.

reauthorize NORA or amend PERC's authorizing statute, it may wish to impose greater specificity on the requirements it has established and to establish mechanisms to enhance compliance with those requirements. Specifically, we suggested that Congress should consider establishing a specific enforcement mechanism, and expressly authorizing DOE to refer any potential violations of law to appropriate enforcement authorities. Consistent with our suggestion, when Congress reauthorized NORA in 2014, it amended the Oilheat Act to, among other things, provide that in the event of a violation of the act, the Secretary of Energy is to notify Congress of the noncompliance and provide notice of the noncompliance on NORA's website.²⁶ With respect to PERC, although Congress made technical clarifications to the Propane Act in 2014 as noted above, it did not address this suggestion we made in 2010.

In contrast to DOE's limited oversight of PERC and NORA, in our June 2010 report, we found that the Department of Agriculture routinely has provided oversight of the various check-off programs authorized by Congress and for which it has mandated responsibilities.²⁷ For example, we previously reported that the Department of Agriculture's commodity divisions—such as the Livestock and Seed Division—ensure that check-off programs are in compliance with the authorizing legislation through routinely reviewing the check-off boards' budgets, financial statements, plans, projects, and contracts.²⁸ Our previous report also noted that Agriculture officials attend board meetings and advise board officials on how consistent their planned activities will be with the authorizing legislation. Likewise, a 2008 Department of Agriculture report to Congress noted that the department's AMS has day-to-day oversight responsibilities for the dairy and fluid milk promotion programs.²⁹ In addition to reviewing and approving the boards' budgets, budget amendments, contracts,

²⁶Pub. L. No. 113-79, § 12409, 128 Stat. 649, 1004 (Feb. 7, 2014), *codified at* 42 U.S.C. § 6201 note.

²⁷As discussed earlier, Congress has authorized check-off programs for agriculture commodities, such as beef, blueberries, cotton, dairy products, eggs, peanuts, popcorn, pork, and potatoes, and USDA has mandated oversight activities over these programs.

²⁸GAO, *Agricultural Marketing: Federally Authorized Commodity Research and Promotion Programs*, GAO/RCED-94-63 (Washington, D.C.: Dec. 29, 1993).

²⁹USDA Agricultural Marketing Service Dairy Programs, vol. 24, *Report to Congress on the National Dairy Promotion and Research Program and the National Fluid Milk Processor Promotion Program* (July 1, 2008).

advertising campaigns, and investment plans, the AMS, among other things, ensures that the collection, accounting, auditing, and expenditure of promotion funds is consistent with the enabling legislation and department orders.

Chairman Burgess, Ranking Member Schakowsky, and Members of the Committee, this completes my prepared statement. I would be pleased to answer any questions that you may have at this time.

**GAO Contact and
Staff
Acknowledgments**

If you or your staff members have any questions about this testimony, please contact me at (202) 512-3841 or by e-mail at ruscof@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Marya Link, Alison O'Neill, Kiki Theodoropoulos, Susan Sawtelle, and Barbara Timmerman made key contributions to this testimony.

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission	The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.
Obtaining Copies of GAO Reports and Testimony	The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (http://www.gao.gov). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to http://www.gao.gov and select "E-mail Updates."
Order by Phone	<p>The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, http://www.gao.gov/ordering.htm.</p> <p>Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.</p> <p>Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.</p>
Connect with GAO	<p>Connect with GAO on Facebook, Flickr, Twitter, and YouTube. Subscribe to our RSS Feeds or E-mail Updates. Listen to our Podcasts and read The Watchblog. Visit GAO on the web at www.gao.gov.</p>
To Report Fraud, Waste, and Abuse in Federal Programs	<p>Contact:</p> <p>Website: http://www.gao.gov/fraudnet/fraudnet.htm E-mail: fraudnet@gao.gov Automated answering system: (800) 424-5454 or (202) 512-7470</p>
Congressional Relations	Katherine Siggerud, Managing Director, siggerudk@gao.gov , (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548
Public Affairs	Chuck Young, Managing Director, youngc1@gao.gov , (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548



Please Print on Recycled Paper.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back.

We will move on to the question part of our hearing. I will recognize myself first for 5 minutes for the purpose of questions.

Mr. Rusco, let me stay with you, because on PERC and NORA, the two checkoff programs that you used as your examples, both within the Department of Energy, is that correct?

Mr. RUSCO. Yes.

Mr. BURGESS. So the money that is collected, where does that money physically go? Does it stay in the Department of Energy? Does it go to the Federal Treasury? Where does it actually end up?

Mr. RUSCO. So as far as the money that reimburses for oversight, I don't know the answer to that. I can find that out for you in the case of DOE.

In the case of the Agricultural Marketing Service, that money I believe goes directly to fund the FTEs that are used for that oversight and administrative activity.

Mr. BURGESS. OK. Then that funding for full-time equivalents for that activity, is that subject to an appropriation by Congress or is that just a pass-through that happens in the agency without Congress being involved?

Mr. RUSCO. I believe that it is the latter. And I will get back and verify that.

Mr. BURGESS. Yes, I would very much appreciate to understand what the actual flow of the dollars through the agencies is.

Ms. Herbst, thank you for your testimony. If I heard you correctly, I think it did voice some questions about—you are not currently doing this type of activity. Is that correct?

Ms. HERBST. That is correct.

Mr. BURGESS. Let me just ask you this, it is a little bit out of left field and I apologize for it, but does the Department of Commerce—you are the Chief Financial Officer, is that correct?—do you prepare a spending plan every year which is submitted to the Committee on Appropriations?

Ms. HERBST. Yes, we do.

Mr. BURGESS. Would you have that available for the committee, not necessarily this morning, but could you make that available to us so we could look at the spending plan that you submitted for this past year?

Ms. HERBST. Certainly.

Mr. BURGESS. How do you see this activity fitting into the spending plan as it is on going, as it is being administered this year? And what I am particularly interested in is the same questions I was asking Mr. Rusco, what happens to the dollars that are collected? Are they simply disbursed by the agency or are you required to come back to the appropriations committee for the allocation of those dollars?

Ms. HERBST. Thank you for that question. Since we don't currently administer a checkoff program, I am not familiar with the answer to that question, but we could certainly also look into that for our particular Department's appropriations rules and get back to you on that.

Mr. BURGESS. Well, my interest in this is more than just cursory or even academic. In other instances, and having nothing to do

with the checkoff program, but in other instances and other agencies it does seem that there are moneys collected that are then disbursed for activities that doesn't go through the appropriations process, and this bothers me because of our constitutional obligation that any funds that go to the Treasury need to be disbursed through an appropriations process.

And I want us to be sure, if we are indeed going to set up a new program, from a new de novo program, I want to be certain that it is done correctly and in accordance with all of the principles that the Founders laid down for us in the Constitution so that the people are protected by the separation of powers that was intended by the Founders.

And obviously, Ms. Herbst, you do voice some concerns. Let me just ask you, has the agency had any discussion about this as to whether or not your agency is prepared to handle the collection and disbursement of money in a checkoff program?

Ms. HERBST. First, I want to make clear, we don't have a policy position on the bill. So our discussion of it has been around how you would administer the program, should it become law.

As we understand it, our role would be in implementation, helping to set up the program and set up the Board and the program. And then it would be oversight and compliance and enforcement for our understanding of the bill. That generally would require expertise from our legal staff, financial staff, internal control staff. And while we haven't put together a detailed approach or plan yet, we believe it would include the need to have a program person who was familiar with the industry and promotion in the industry and so forth. So with have had that level of conversation.

Mr. BURGESS. Very well. I thank you for that answer. My time has expired. I may have one follow-up question for you before we finish.

Mr. Cardenas, I recognize you for 5 minutes for questions, please.

Mr. CARDENAS. Thank you, Mr. Chairman. I appreciate the opportunity to have this dialogue before the public.

In this 2010 report on the propane and oil heat checkoff programs, known as PERC and NORA, respectively, the GAO made some recommendations to Congress to improve accountability and oversight of the programs.

Mr. Rusco, the GAO recommended that Congress specify the priority of the activities that should be undertaken by the Board. Was the recommendation followed for either PERC or NORA as far as you are concerned?

Mr. RUSCO. Yes. For NORA, when NORA was reauthorized in 2014, Congress did specify that a greater proportion of the funds collected be spent on research and development, among other things.

Mr. CARDENAS. And so far has that adjustment seemed to prove—the follow-through on that adjustment, is it happening or is it too early to tell?

Mr. RUSCO. It is too early and we have not been asked to review it yet. So if we do, we will make that determination.

Mr. CARDENAS. OK. Do you think the concrete masonry checkoff program could be better if this bill clearly specified the priorities of the program?

Mr. RUSCO. I think we are neutral on that. It is the intent of Congress that if the Congress does intend for there to be specific guidelines, then it probably needs to be laid out explicitly. What we found was that with PERC and NORA they spent over half of their money on consumer education. And within that bucket, there were a lot of activities that we thought might not even fit the definition of that.

Mr. CARDENAS. OK. Mr. Rusco and also Ms. Herbst, some have suggested that this bill specify that research on ways to improve concrete masonry products and training for builders and developers should be priorities for the Board. Do you support the inclusion of a provision that would clarify that research and development and training are priorities for the program?

Mr. RUSCO. Again, we are neutral about what Congress' intent for the program is, but if that is to support that, then it might be prudent to state that explicitly.

Mr. CARDENAS. So basically, if we write language in legislation and our intent is not written in that legislation, then that would give fungibility for any organization to not have to follow the intent. So basically do you agree that if that is the legislative intent of Congress, the we should in fact put it in the bill?

Mr. RUSCO. It is what we found was missing in PERC and NORA. And then when Congress did reauthorize it, NORA, they did include that kind of specification.

Mr. CARDENAS. OK. So the question is to both of you, along those same lines for PERC and NORA, the GAO recommended that Congress specify the proportion of the assessment funds that should be spent on each activity. This bill, however, does not include such a provision, at least at this time. Do you support including this kind of language if that is the intent of Congress?

Mr. RUSCO. If it is the intent of Congress that there be certain proportions, then it would ensure greater certainty that that was actually done if that was included.

Mr. CARDENAS. So in other words, if an organization is provided with opportunities and responsibilities, but if those responsibilities are not specific, then they in fact are not doing anything wrong if left to their own interpretations, correct?

Mr. RUSCO. That is correct.

Mr. CARDENAS. OK. So being with what has gone on with PERC and NORA, and there are some criticisms of that flexibility and that not following the supposed intent as some people have described, we should be more prescriptive in this bill, if in fact we want the actual outlay and the actual activities to be more in line with what the intent is.

Mr. RUSCO. That is certainly what we found in the case of PERC and NORA.

Mr. CARDENAS. OK. So again, absent specific language, for example, even PERC and NORA aren't necessarily doing anything wrong per se, if one cannot point to specific legislative language that is prescriptive?

Mr. RUSCO. That is correct. We found that it was unclear whether what they were doing was actually meeting the intent of Congress because the language was not—

Mr. CARDENAS. In my 18 years of legislating I can agree that if we are not prescriptive as legislators and we write legislation, then we can't blame anybody for not following through with the intent if the intent is left out of the language.

Thank you very much, I yield back.

Mr. LANCE [presiding]. Thank you very much.

The chair recognizes Mr. Harper.

Mr. HARPER. Thank you, Mr. Chairman.

Thank you both for being here.

And, Mr. Rusco, if I could ask you a question. You just discussed that Congress should consider specifying the prioritization of activities it wants to be when you undertake a checkoff program. Is there a danger in being too specific to the point that we could limit the flexibility of a checkoff program to respond quickly and effectively to changes in the marketplace?

Mr. RUSCO. I think some checkoff programs provide ranges of proportions to be spent, so they are not rigidly specific.

Mr. HARPER. Can you get too specific, though, that limits that flexibility?

Mr. RUSCO. I would imagine that that is possible, yes.

Mr. HARPER. I will yield back in the interest of time, Mr. Chairman.

Mr. LANCE. Thank you very much.

Ms. Castor, you are recognized.

Ms. CASTOR. Well, thank you very much. Thank you for calling this hearing. And welcome to the witnesses.

And, Ms. Herbst, I am a cosponsor of the bill, along with my colleague Mr. Guthrie. And I want to thank you for expressing your general support. The Department of Commerce mission is to help American businesses, and a lot of these businesses are spread out all across the country. And my interest has been in, because this is an industry-driven initiative, it is going to be voluntary, but I hear the message from GAO and from Commerce on the need for specifics.

I note that in the bill it does provide certain caps that hopefully will address concerns raised by GAO. It says that 50 percent of the assessments paid by a manufacturer must be spent on promotion, research, or education programs in the manufacturer's geographic area. A lot of those terms are defined in the bill for greater specificity.

In addition, the statute prohibits the use of assessment funds to influence legislation or governmental action, which addresses a concern of the GAO as well in the other cases. And after the program's creation, administrative expenses are capped, cannot exceed 10 percent of the Board's income.

Mr. Rusco, is that the type of caps on expenditures and a little more specificity that you are recommending generally?

Mr. RUSCO. I think when we looked at H.R. 985 in the context of what we found with PERC and NORA with regard to the specificity, the language was more similar to PERC and NORA than dissimilar. Let me put this a different way. There was less specificity

in the original NORA authorization than there was in the reauthorization.

Ms. CASTOR. And then in the other law, the Congress—there was no reauthorization, so the Congress has not addressed that.

Mr. RUSCO. That is correct, that remains the same.

With respect to the other two things you recommended, the way that 985 is currently written with the provision that Commerce will review within 30 days certain activities and spending plans of the program, if they don't review it within 30 days then it is deemed to have been approved. That is very similar also to what the original PERC and NORA language was and it is different than what the NORA reauthorization language is, which required DOE to perform administrative and oversight activities. Because prior to that, for some 13 years DOE had not performed any of those oversight or administrative activities.

Ms. CASTOR. Right. Well, thank you very much for your input. I think that is very helpful.

And I yield back the balance of my time.

Mr. LANCE. Thank you very much.

The chair recognizes Mr. Guthrie.

Mr. GUTHRIE. Thank you very much.

And I appreciate the panelists for being here. I appreciate working with my friend from Florida, Ms. Castor. Mr. Whitfield was here earlier, I think he will be here a little later. He has a constituent testifying in the next panel. So I appreciate that.

And as I stated earlier, this bill is important for small manufacturers of concrete block. And I would point out the nature of the product is it has heavy, it is hard to transport over long distances, and in turn it makes it difficult to get bigger. So it is a lot of small businesses in a lot of our communities, as a lot of us have learned over the last couple years.

So an R&D program, it is difficult for a single business to establish a big R&D program, so it is important. And I know the Commerce Department, what they do is move forward. So I appreciate your being here. And I completely sympathize and understand that the questions when you are asked to get involved in a program you haven't been involved in before, I think it is fair to say we have not done this, there are a lot of questions that we want answers to, but I think working together we can make that happen.

And I know that other agencies or other departments, the Department of Energy being one, has stood up boards in this kind of, and so there are examples of other successful departments doing this. I am sure the Department of Commerce would be willing, if this moves forward and the President signs it, to work with those agencies to make sure we move forward. If you would like to comment on that.

Ms. HERBST. Yes, thank you. We would definitely be willing to learn more, understand more, work with the committee and with other agencies who with done this before to ensure that we discharge our responsibility as well.

Mr. GUTHRIE. And I am sure the Department of Commerce also has other citizens advisory boards or those type of boards that are probably not a checkoff board, obviously not a checkoff board, as you stated.

Ms. HERBST. That is correct.

Mr. GUTHRIE. But you have certainly worked in the area with other boards and moving forward.

Ms. HERBST. That is correct.

Mr. GUTHRIE. As I said, I certainly sympathize and understand your questions, and I think all of us working together can make this move forward.

And on to Mr. Rusco. Energy took the lead in—I think actually the other one was Commerce and Energy, but Energy took the lead in setting up the program. I was just wondering if your research could provide any insights into how the oversight role was fleshed out between the two departments.

Mr. RUSCO. So I think that initially there wasn't much either between Commerce and DOE or a collaboration between them. They were just kind of passing on. Since 2014, with the requirement that DOE set up enforcement and oversight activities, we have not looked at the program since then. So I can't really comment on how that is going.

Mr. GUTHRIE. You mentioned the need for oversight and expenditure of funds, and I understand the burden that this could put on a department. Would a third-party auditor kind of requirement move forward, would that be something that you would see would be beneficial, to take some effort off the agency?

Mr. RUSCO. Yes, that is another thing we recommended and I believe was included in the 2014 reauthorization, was the setup of a third-party entity to essentially monitor spending of all the widespread state and other recipients of those funds and make sure that the funds were spent on activities that had been approved. And then that entity would then report to the oversight entity and therefore take some of pressure off that.

Mr. GUTHRIE. Well, thank you. I really appreciate both of you being here thank you today, and I appreciate it.

And I yield back.

Mr. BURGESS [presiding]. The chair thanks the gentleman. The gentleman yields back.

The chair recognizes the gentleman from Florida, Mr. Bilirakis, 5 minutes for questions, please.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I appreciate it.

Mr. Rusco, the organizational structure and activities of the checkoff program vary. Based on GAO's observations of checkoff programs, is there a certain organizational structure that has generated more success than others?

Mr. RUSCO. I don't think we have looked at that question in particular. So we have not tried to compare all the different models and see how well they perform. Really our observations are just specifically about PERC and NORA and how some of the language in their authorizing acts allowed—well, created some uncertainty about whether the spending was being done according to Congress' intent.

Mr. BILIRAKIS. Last question. Are there recommendations that GAO has offered to agencies overseeing checkoff programs in the past that provide guidance on how to detect noncompliance with these programs?

Mr. RUSCO. We have done work over the years, over many years, looking at checkoff programs and have made recommendations over time. The recommendations that we made in this most recent report in 2010 were actually matters for congressional consideration before reauthorization rather than recommendations to the agency. But we had in a previous report recommended that DOE do more with its oversight role and they had disagreed with that and not implemented that recommendation.

Mr. BILIRAKIS. OK. Thank you very much.

I yield back, Mr. Chairman.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back.

The chair recognizes Ms. Brooks from Indiana for 5 minutes for questions, please.

Mrs. BROOKS. Thank you, Mr. Chairman.

Prior to coming to Congress, I was at Ivy Tech Community College in administration, and at that time I focused and led the school's strategies aimed at workforce development. One of my greatest interests both then and now was creating a trained and well-educated workforce by providing them with the tools and the experiences they need to grow and succeed. And I know how much the masonry industry affects the State of Indiana.

Wells Concrete Masonry has operated in the Fishers community for over 20 years, and in Pendleton, Indiana, it has benefited from Swackhamer Masonry, present since 1970s. Masonries are vital to revitalizing both the residential, public, and commercial development of our State and country. Unfortunately, the recent downturn in the masonry industry has hit hard.

In 2013, USA Today ranked block masonry as number 5 on their list of top 10 disappearing jobs in the USA. It is essential for the future of our infrastructure and our economy that we reverse this trend. That is why I am proud to be a cosponsor of this bill. By providing the masonry industry the ability to raise funding necessary to support research, education, and promotion, companies will have the needed resources to successfully develop, implement and manage programs needed to increase sales and expand markets.

The bill makes strides toward a more prosperous America for Hoosiers, and I am glad we are holding this hearing today, Mr. Chairman, so we can learn more about it.

With that said, Mr. Rusco, I would like to ask you, based on GAO's research, how have Federal agencies overseeing checkoff programs validated or verified the eligibility of producers or manufacturers to participate in such programs?

Mr. RUSCO. Most of that work would have been related to agricultural checkoff programs. And I don't have a very comprehensive list of that, of all the work we have done there. I could answer that question for the record, if you wish.

Mrs. BROOKS. I would be, because we often, when we think about checkoff programs, we typically do think of it with respect to agriculture products. And so I do think that would be helpful to know and I also think helpful to know with respect to this industry how it would be done.

Do Federal agencies, if you know, that have overseen checkoff programs, do you know if they have an employee on hand with subject matter expertise on the affected commodity to help with the oversight and implementation or do you know much about that? And if not, could we please receive some information at a later time?

Mr. RUSCO. For the agricultural products, the Agricultural Marketing Service has staff that are specifically designated as administrative and oversight personnel for those programs. They are reimbursed by the programs. They develop expertise and knowledge about the programs and the industries over time. So that body has a great deal of expertise and specific knowledge about the industries and I think can provide very thoughtful oversight and administration. But it takes some time to develop that.

Mrs. BROOKS. Well, I certainly hope that we learn from the work of previous checkoff programs to advance it.

So with that, I yield back. Thank you.

Mr. BURGESS. The chair thanks the gentlelady. The gentlelady yield back.

I believe we are going to have two follow-ups, one from Mr. Cardenas, you are recognized for 5 minutes for your follow-up.

Mr. CARDENAS. Thank you very much, Mr. Chairman.

I just wanted to take the opportunity to commend a business that is right in the middle of the largest populated county in the country, which is Angelus Block in LA County. It just so happens that it is in Sun Valley in my district. And it is serendipitous that that is where my father used to take me when he used to buy his block when we used to make block walls around the neighborhood where I used to work with my father.

But I just wanted to give a shout-out to the Antonini family, who it has been in their family for generations. And they happen to be the largest manufacturer and supplier of concrete masonry units in all of southern California. And it was just wonderful to have the opportunity when I was a little kid to look up to my father and the former father-owner of the business and listen to them transact and for them to continue to serve the community for generations now and for me to be able to give service back to them by being hopefully a conscientious Member of Congress trying to figure out how we are going to make this legislation good, and hopefully we can bring it to fruition so that the industry could get the representation it is asking for.

So I just wanted to say thank you to Angelus Block for their generations of work. And with all due respect, it is not lost on me that when you look at the concrete jungle of Los Angeles with 10 million people, that is a lot of masonry over the decades that they have been one of the suppliers of.

So I yield back. Thank you very much, Mr. Chairman.

Mr. BURGESS. The chair thanks the gentleman.

The gentleman yield back.

I recognize myself for 5 minutes for follow-up.

Along that same line, I would recognize the contributions of Acme Brick in north Texas. Certainly the best thing to have around your house, as I have known growing up, and every house

I have lived in, in Denton County, Texas, has been indeed built out of Acme Brick.

Ms. Herbst, I wanted to ask you, in your prepared testimony you reference the International Trade Administration. Is that part of the Department of Commerce?

Ms. HERBST. Yes, it is.

Mr. BURGESS. And you note that it is charged with promoting the export of United States goods and services in foreign markets and ensuring fair trading and compliance with trade laws and agreements. Is that correct?

Ms. HERBST. That is correct, yes.

Mr. BURGESS. So if this checkoff program were to proceed and if the moneys were to actually go out, are there precautions that you must take or that the Department must take in order to ensure that this is all done in compliance with the World Trade Organization, such that these checkoff moneys are not seen as subsidies that would unfairly put our companies that are competing with other companies overseas?

Ms. HERBST. That would be correct. We are responsible for ensuring that we don't do anything that would put our companies in conflict with international law, yes.

Mr. BURGESS. And then is the converse true? Are you also charged with looking at materials that may be subsidized by other countries that are then unfairly sold in our markets in this country?

Ms. HERBST. Yes, the International Trade Administration does have an enforcement responsibility, particularly when companies bring forward and ask us to investigate a potential case of a dumping.

Mr. BURGESS. Let me just, and this is really unrelated to what we are talking about this morning, but again, I so rarely get a chance to talk to someone from the Department of Commerce I want to use the time wisely.

It came to my attention in the district that there are people who manufacture and install granite countertops in housing and apartments, but builders can actually buy the finished and assembled product from a Chinese source cheaper than they can purchase the materials and build it. So the competitive balance therefore goes to the foreign company.

And their question to me is, is someone looking out for their best interest if a builder can simply buy a prefinished granite counter top from a Chinese source and there is no way that the guy who buys the slab and then employs the person to cut it and put it together, there is no way that they can be competitive other than of course obviously the superior quality of workmanship that exists with every trade in north Texas and Denton County in particular. Is that something your office would be in charge of?

Ms. HERBST. Yes. I could offer that if we could work perhaps with your staff and follow up on that with them, we would welcome that.

Mr. BURGESS. I would welcome that. I would like that very much.

That concludes my question. Is there any follow-up question from either side of the dais? If, not that will conclude the questions for this panel. I want to thank both of you for participating today. And

we are going to take the briefest of recesses while we set up for the next panel. Thank you very much.

[Recess.]

Mr. BURGESS. The subcommittee will come back to order. And I do want to thank you all for your patience. Thank you for the quick turnover on the panel. We do want to try to get through as much as we can, because there will be votes on the floor. And if possible, if we can conclude and not have to hold you over, that would be my goal.

But I do want us to move into our second panel. We will follow the same format of the first panel. Each witness will have 5 minutes for an opening statement, and then you will have questions from the members.

For our second panel I want to welcome the following witnesses: Mr. Major Ogilvie, the general manager for Ready Mix USA; Ms. Kate Offringa, president of the Vinyl Siding Institute; and Mr. Keith Waide, president of Ruby Concrete Company.

We will begin our second panel opening statements with Mr. Ogilvie. You are recognized for 5 minutes for an opening statement, please.

STATEMENTS OF MAJOR OGILVIE, GENERAL MANAGER, READY MIX USA, LLC; KENT WAIDE, PRESIDENT, RUBY CONCRETE COMPANY; AND KATE OFFRINGA, PRESIDENT, VINYL SIDING INSTITUTE INCORPORATED

STATEMENT OF MAJOR OGILVIE

Mr. OGILVIE. Good morning. My name is Major Ogilvie. I work in Birmingham, Alabama with the USA Family of Companies. We are a CEMEX Company providing building materials to the construction industries. I am involved in many parts of our business, primarily in our concrete masonry operations, but also with our cement, aggregate, ready-mix, and other manufactured concrete products.

Previously, I served as a general manager for our concrete masonry business, Block USA. Today I am here to testify as a representative of our U.S. concrete masonry industry.

In October 2010, and after 2 years of study by members of our industry to determine the best way to better and more consistently fund important initiatives for our success in the future, I was honored to be asked to lead our industry's effort to pursue the creation of a commodity checkoff program to support much-needed research, education, and promotion efforts for our products. And I am honored to be with you today and to address the merits of H.R. 985.

I would like to thank Chairman Burgess and Representative Schakowsky for their role in making this hearing possible. And I would like to thank the lead sponsors of the bill, Representative Brett Guthrie and Representative Kathy Castor, for their leadership.

Let me outline the nature of our industry and the role that our product plays in construction. Concrete masonry is not just an American industry, it is truly a local industry. Concrete masonry manufacturing plants are located in every State and territory in the U.S.

While the marketplace continues to be challenging today, the vast majority of our some 350 U.S. Concrete masonry-producing companies remain as they have more than 100 years, as family-owned operations. Well over 90 percent of these companies are classified as small businesses, with annual plant sales revenue of concrete masonry products in the \$2 million to \$3 million range. It was for industries like ours that commodity checkoff programs were originally created, and this legislation does not change the bid process, the method our products are sold in the marketplace.

The jobs created by our domestic concrete masonry companies are not outsourced overseas. All our plants are truly local businesses that support high-paying local jobs and generate tax revenues for our cities, counties, and states. The concrete products we manufacture are used directly in the construction of local schools, homes, hospitals, hotels, apartments, office buildings, shopping centers, and municipal buildings, mostly within a 75-mile radius due to the weight and the transportation cost. And our local impact goes well beyond the manufacturing plant. Also within a 75-mile radius, we create local jobs and revenues for our raw material suppliers, as well as our craft workers, the masons who install our products in the wall.

Like other segments of the construction industry, business has been slow to rebound. Over the past 7 to 9 years, many plants have closed their doors and others are still fighting to return of profitability. A national study—thank you, Mrs. Brooks—by CNBC says our industry is still among the 10 worst hardest hit by the construction downturn. Demand for our products has declined and is still soft, layoffs in our industry hit hard, directly affecting our local economies.

So how do we turn it around? That is why we are here today. We believe this program will spur and stimulate jobs as well as create new innovations in our industry, which will help both our construction industry partners and ultimately the American consumer.

The public will benefit from successful implementation of this program through the construction more energy-efficient, more durable, more cost-effective, and stronger buildings. Like many of you, I have personally seen the impact of natural disasters and the devastation to homes and structures from the 2011 Alabama tornadoes. Research and education coming from this checkoff program will help minimize the impact on communities from these events and reduce economic losses by helping designers, owners, and builders to make better use of concrete masonry attributes.

Our industry has worked hard to share the need for this legislation to our local congressional representatives. Over the last 2 years, hundreds of our industry members, including our suppliers and customers, have traveled to Washington to tell their story, meeting with over 500 House and Senate offices. We have hosted over 50 Members of Congress and staff with plant tours in their districts. Our efforts resulted in 267 cosponsors during the 113th Congress, and so far in the 114th we have over 160. Our support is very bipartisan.

Thank you for considering H.R. 985 and its ability to enable our industry to help ourselves, to create new high-wage jobs here at home, and ultimately improve our communities.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Ogilvie follows:]

40

Testimony of

Ready-Mix USA – a CEMEX Company

submitted to the

U.S. House of Representatives

Committee on Energy and Commerce

Subcommittee on Commerce, Manufacturing and Trade

for its hearing on

“HR 985, Concrete Masonry Products Research, Education and Promotion Act of 2015”

held on

July 10, 2015

Morgan Ogilvie

General Manager

On behalf of:

Ready-Mix USA – a CEMEX Company

2570 Ruffner Road

Birmingham, AL 35210

205-314-6400

<http://specblockusa.com/>

Good morning, my name is Major Ogilvie and I work out of Birmingham, Alabama as a member of the Ready Mix & Block USA Family of Companies – A CEMEX Company. I am involved in many parts of our business - primarily in our concrete masonry operations but also in other parts of our business which include cement plants, aggregate quarries, ready-mix concrete plants, and other concrete product manufacturing. Previously, I served as a General Manager for our concrete masonry business, Block USA.

My testimony today is as a representative of our US concrete masonry industry. In October 2010, and after 2 years of study by members of our industry to determine the best way to better and more consistently fund initiatives that are important to our success and future, I was honored to be asked to lead our industry's effort to pursue the creation of a commodity check-off program; a program that would support much needed research, education and promotion efforts related to our products and future.

And I am honored to be here with you today to address the merits of HR 985. I would like to thank Chairman Burgess and Rep. Schakowsky for their role in making this hearing possible. And I would like to thank the lead sponsors of the bill, Rep. Brett Guthrie and Rep. Kathy Castor for their leadership.

For those that are not familiar with our industry, I would like to briefly outline the nature of our industry and the role that our product plays in construction. Concrete masonry is not just an American industry; it is truly a local industry. There are concrete masonry block manufacturing plants located in every state and territory in the U.S. and in most congressional districts. While our industry continues to experience a challenging marketplace, particularly since the 2008 financial crisis, the vast majority of our 350 or so U.S. concrete masonry producing companies remain as they have for more than 100 years – as family-owned operations, many carrying into their fourth generation. Well over 90% of these companies are classified as small businesses, with annual sales revenues of concrete masonry products in the \$2 to \$3 million range.

It was for industries like ours that commodity check-off programs were originally created. And this legislation does nothing to change the bid process or the way our products are sold in the marketplace.

The jobs created by our domestic concrete masonry companies are not outsourced overseas. All of our plants are truly local businesses that support high paying local jobs and local tax revenues for our cities, counties and states. The concrete products that we manufacture are used directly in the construction of local schools, homes, hospitals, hotels, apartments, office buildings, shopping centers, and municipal buildings – mostly within a 75-mile radius of their plant. And our local impact goes well beyond the manufacturing plant. We create jobs and revenues for our suppliers of raw materials as well the craft-workers (masons) who install our product, both of which are also local and within a 75-mile radius of our plants.

Like other segments of the construction industry, our businesses have been slow to rebound. Gone are the boom days of the early 2000's. Over the past 7 to 9 years, many plants have closed their doors and others are still fighting to return to profitability. A national study by CNBC says the concrete products industry is still among the 10 hardest hit by the recession. Demand for our products has declined and is still soft. Layoffs in our industry hit hard, directly affecting our local economies.

How do we turn it around? That is why we are here today. We believe this program will spur and stimulate jobs as well as create new innovations in our industry which will help our construction industry partners and ultimately, the American consumer.

The public will benefit from successful implementation of this program through the construction of more energy efficient, more durable, more cost-effective, and stronger buildings. I personally observed the devastation to homes and structures in the 2011 Alabama tornados and many members of this committee have personally observed the impacts of devastating natural disasters in their own states and home districts. The research and education coming from this check-off program will help minimize the impact on communities from these events and reduce economic losses by helping designers, owners and builders to make better use of concrete masonry's attributes.

The members of our industry have worked hard to share the need for this legislation to their local congressional representatives. Over the last 2 years, hundreds of our industry members including our suppliers and customers have traveled to Washington to tell their story and have met with over 500 House and Senate offices. We have hosted over 50 members of Congress and staff at plant tours in their districts. The effectiveness of their stories is evidenced by the 267 co-sponsors in the 113th Congress and the more than 150 co-sponsors so far here in the 114th.

Thank you for considering HR 985 and its ability to enable our industry to "help ourselves", to create new high-wage jobs here at home, and ultimately improve our communities.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back.

Ms. Offringa is recognized for 5 minutes for an opening statement please.

STATEMENT OF KATE OFFRINGA

Ms. OFFRINGA. Thank you very much.

Mr. Chairman, Ranking Member Schakowsky, members of the committee, thank you for the opportunity to testify today at this hearing on H.R. 985. My name is Kate Offringa.

I have the honor to serve as president of the Vinyl Siding Institute here in Washington. We are the trade association for manufacturers of vinyl and other polymeric siding and suppliers to our industry. Vinyl siding manufacturing is a \$2 billion industry that provides quality manufacturing jobs in this country. Further, our industry is an important part of the overall vinyl industry in the United States, a \$54.5 billion industry with nearly 3,000 vinyl-producing facilities, 350,000 employees, 70 percent of whose products go into buildings and construction.

On behalf of our association's 44 member companies, I want to convey the Vinyl Siding Institute's opposition to H.R. 985. We oppose this bill for four primary reasons. And, again, I appreciate the opportunity to elaborate. Those are: One, concrete masonry industry is free to do collect research, education, and promotion of its products through its multiple trade associations; two, Federal sponsorship of a checkoff program amounts, in our view, to a subsidy for the concrete masonry industry; three, this bill would create a nonlevel playing field for competitive products like those manufactured by the companies that I represent; and, four, creation of a checkoff program for the concrete masonry industry will set a precedent, encouraging manufacturers of all sorts of products in our sector to seek similar assistance from the Federal Government.

If you would, please allow me to address each of these points in turn. One, the concrete masonry industry, being free to do collective research through its trade associations: H.R. 985 is a bill designed, and I quote from the text, "to enable concrete masonry product manufacturers to establish, finance, and carry out a coordinated program of research, education, and promotion to improve, maintain, and develop markets for concrete masonry products." To quote further from the notice for this hearing, the intent is boosting overall sales and production of a particular good without reference to a specific brand.

Mr. Chairman, members of the committee, I respectfully submit that that is the role of a trade association simply and well stated. We understand that the bill was introduced at the request of the masonry industry in part because many firms in that industry do not belong to organizations that contribute to concrete masonry research. Free-ridership is a problem common to trade associations in every industry. The challenge is upon us, as associations, to show value to our members and encourage their participation. The free-ridership problem is not unique to the concrete masonry industry and does not, in our view, warrant government intervention.

Number two, Federal sponsorship of a checkoff program amounts, in our view, to a subsidy for the concrete masonry indus-

try. As stated, the intent of H.R. 985 is to provide a federally sponsored mechanism that will assess the concrete masonry industry for funds to conduct research and promotion for its products. As competitors to that industry, my member companies oppose this bill, which will, if enacted, provide the concrete masonry industry with substantial, federally sponsored advantage over the research and promotion activities of our industry, thus providing the concrete masonry industry with an unfair, competitive advantage, in our view, over the products and systems of our industry.

The report accompanying S. 429, an identical bill considered by the Senate in the last Congress, stated that the cost of the Federal Government to oversee the proposed checkoff program would be \$4 million a year. That sum is greater than the annual budgets of many trade associations, including the Vinyl Siding Institute. And while H.R. 985, as drafted, provides for Department of Commerce recovery of administrative costs from the industry assessment, we do not believe that the total cost to the government can be recovered efficiently or effectively and are, therefore, concerned that this program would not be cost-neutral to the American taxpayer.

And I would add that even if total cost recovery of government administrative expenses was achieved, the government sponsorship of the program appears, in our view, to be a seal of approval for the concrete masonry industry and, thereby, constitutes an advantage for them in our view.

Number three, this bill would create a nonlevel playing field for competitive products like those manufactured by the companies I represent. We understand that checkoff programs are common in the agriculture industry. And we would like to draw a distinction for you between that industry and the building products industry as it applies to this argument. In the eyes of consumers, beef is generally beef and milk is generally milk with no obvious differentiation between producers. That ensures the ease with which research and promotional programs can be funded and implemented without causing competitive disadvantage to any producer. That is not the situation for the buildings products industry.

There is a host of differences between concrete masonry and other cementitious siding products, vinyl siding, and other types of cladding for buildings. The inherent differences in our products create real competition between our categories within the broader building products industry. Federally backed promotion of one type of building product over another would amount to the Federal Government picking a winner in the eyes of the consumer is our concern. We believe the market should do that.

Finally, number four, creation of a checkoff program for the concrete masonry industry will set a precedent, encouraging manufacturers of all sorts of products in building construction to seek similar assistance from the Federal Government. That is a slippery slope.

In conclusion, the Vinyl Siding Institute and its members oppose H.R. 985 for the subsidized advantage it would give one competitor above all others. We ask that you consider the adverse effect passage and enactment of this bill would have on our industry. And we urge you to reflect on the dangerous precedent the legislation

would set that could lead to any number of industries requesting similar checkoff programs.

Thank you, once again, for the opportunity be heard today. And I would be happy to address any questions you have for me at the appropriate time.

[The prepared statement of Ms. Offringa follows:]

**United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade
July 10, 2015 Hearing
“H.R. 985, Concrete Masonry Products Research, Education, and Promotion Act of 2015”**

Testimony of Kate Offringa, President, Vinyl Siding Institute

Dear Mr. Chairman, Ranking Member Schakowsky, and Committee Members,

Thank you for the opportunity to testify today at your hearing on “H.R. 985, Concrete Masonry Products Research, Education, and Promotion Act of 2015.”

My name is Kate Offringa, and I have the honor to serve as President of the Vinyl Siding Institute here in Washington. We are the trade association for manufacturers of vinyl and other polymeric siding and suppliers to our industry. Vinyl siding manufacturing is a \$2 billion industry that provides quality manufacturing jobs in this country. Further, our industry is an important part of the overall vinyl industry in the United States, a \$54.5 billion industry with nearly 3,000 vinyl producing facilities, and 350,000 employees, 70% of whose products go into building and construction.

On behalf of our association’s 44 member companies, I want to convey the Vinyl Siding Institute’s opposition to H.R. 985. We oppose this bill for 4 primary reasons:

1. The concrete masonry industry is free to do collective research, education and promotion of its products through its multiple trade associations.
2. Federal sponsorship of a check-off program amounts to a subsidy for the concrete masonry industry.
3. This bill would create a non-level playing field for competitive products like those manufactured by the companies I represent.

4. Creation of a check-off program for the concrete masonry industry will set a precedent encouraging manufacturers of all sorts of products to seek similar assistance from the federal government.

Please allow me to address each of those points in turn.

1. The concrete masonry industry is free to do collective research, education and promotion of its products through its multiple trade associations.

H.R. 985 is a bill designed (and I quote from the text) *"to enable concrete masonry products manufacturers to establish, finance, and carry out a coordinated program of research, education, and promotion to improve, maintain, and develop markets for concrete masonry products."* To quote further from the notice for this hearing the intent is *"boosting overall sales and production of a particular good without reference to a specific brand."* Mr. Chairman, Members of the Committee, that is the role of a trade association very simply and well stated.

We understand that the bill was introduced at the request of the masonry industry in part because many firms in that industry do not belong to organizations that contribute to concrete masonry research. Free ridership is a problem common to trade associations in every industry. The challenge is upon us as associations to show value to our members and encourage their participation. The free ridership problem is not unique to the concrete masonry industry and does not warrant government intervention.

2. Federal sponsorship of a check-off program amounts to a subsidy for the concrete masonry industry.

As stated, the intent of H.R. 985 is to provide a federally-sponsored mechanism that will assess the concrete masonry industry for funds to conduct research and promotion for its products. As competitors to the concrete masonry industry, my member companies oppose this bill, which will, if enacted, provide the concrete masonry industry with a substantial federally sponsored advantage over the research and promotion activities of our industry, thus providing the concrete masonry industry with an unfair competitive advantage over the products and systems of our industry.

The report accompanying S. 429, an identical bill considered by the Senate in the last Congress, stated that the cost to the federal government to oversee the proposed check-off program would be \$4 million per year. That sum is greater than the annual budgets of many trade associations, including the Vinyl Siding Institute. While H.R. 985, as drafted, provides for Department of Commerce recovery of administrative costs from the industry assessment, we do not believe that the total cost to the government can be recovered efficiently or effectively. Therefore, we are concerned that this program would not be cost neutral to the American taxpayer.

3. This bill would create a non-level playing field for competitive products like those manufactured by the companies I represent.

We understand that check-off programs are common in the agricultural industry, and we would like to draw a distinction for you between that industry and the building products industry, as it applies to this argument. In the eyes of the consumer, beef is generally beef, and milk is generally milk, with no obvious differentiation between producers. That ensures the ease with

which research and promotional programs can be funded and implemented without causing competitive disadvantage to any producer.

That is not the situation for the building products industry. There is a host of differences between concrete masonry, vinyl siding, and many other types of claddings for buildings. The inherent differences in our products create real competition between our categories within the broader building products industry. Federally-backed promotion of one type of cladding over another would amount to the federal government picking a winner. We believe the market should do that.

4. Creation of a check-off program for the concrete masonry industry will set a precedent encouraging manufacturers of all sorts of products to seek similar assistance from the federal government.

This is a slippery slope!

In conclusion, the Vinyl Siding Institute and its members oppose H.R. 985 for the subsidized advantage it would give one competitor above all others. We ask that you consider the adverse effect passage and enactment of this bill would have on our industry. And we urge you to reflect on the dangerous precedent the legislation would set that could lead to any number of industries requesting check-off programs.

Thank you, once again, for the opportunity to be heard today. I would be happy to address any questions you have for me.

Respectfully submitted,

Kate Offringa
President
Vinyl Siding Institute
Washington, DC

Mr. BURGESS. The chair thanks the gentlelady.

The chair recognizes Mr. Waide for 5 minutes for your opening statement please.

STATEMENT OF KENT WAIDE

Mr. WAIDE. Good morning. It is a privilege to testify in front of this subcommittee today on behalf of my company and others like mine. My name is Kent Waide. And I represent Ruby Concrete Company of Madisonville, Kentucky.

I believe our company is like many others within the concrete masonry industry. We are family owned, and we are small. It began in 1869 and has been family operated for 146 years. We currently have three generations from our family working at Ruby Concrete Company. And our business is recognized as one of the oldest in Kentucky. I am proud of the role our company has played in our region's history. We supply the masonry products used to build our local schools, fire stations, home centers, grocery stores, and other facilities that our community uses every day. We have also supplied public works projects, including roads, bridges, courthouses, and judicial centers. In addition, our products were used to build barracks for the 101st Airborne Division at Fort Campbell.

We employ 16 people directly and create jobs both upstream for our vendors and downstream to our customers. Our business is small, innovative, resourceful, and aggressive. During the construction recession, we reinvested our capital to create one of the most modern concrete products plants in the U.S. The construction materials industry is changing however.

Companies like mine struggle to compete with other building materials that have different demographics. We welcome competition. But we seek a mechanism to level the playing field for our commodity industry. If we manage our resources wisely, Ruby Concrete can invest in modern equipment and support our employees. But a company of my size simply does not have the resources to educate, research, and promote our commodity products throughout a broad-based market. We belong to associations that perform good work on our behalf.

But I believe a commodity checkoff program is necessary if we are to collectively invest more fairly and support growth that will benefit all of us in the industry. Many of you know our product as a gray cinderblock. But it is actually a very versatile design tool. Producers like mine use a wide range of natural, manufactured, and recycled aggregates that are readily found throughout the country. Concrete blocks are strong enough to support tall buildings and protect families from flying debris in hurricanes and tornadoes. They are noncombustible and prevent the spread of fires in buildings. They also survive forest fires.

Reinforced concrete masonry protects people and assets in earthquakes and wind events. It also shields against explosions and bullets, which is why our military uses concrete masonry to build mock cities in order to train soldiers in urban assault and terrorism defense. Concrete masonry is environmentally friendly. It does not rot or mold. And it is not subject to termites.

It has terrific thermal mass properties that reduce the amount of insulation needed to meet energy codes. It can be made in a

rainbow of colors to allow creative designs that integrate texture and imagination. For example, our company was commissioned by a university to produce a purple concrete block that was used to build a signature wall on the campus of the school with their certain colors.

These properties, design qualities, and uses resulted through many years of work and testing. We have learned from each other and built on shared knowledge. But the old system of learning and communicating is ineffective in today's world. Technology, speed, and resources are necessary for our industry to advance. And we currently cannot keep up. We are losing ground. We are losing producers. And we are losing local jobs.

I have spoken with many concrete block producers across the country. And we agree that our industry needs a new approach to support education and research that fosters new technologies and broad-based promotion. Our industry will leverage the outcomes of these investments to support the construction of high-performance, more sustainable, and cost-effective building solutions. That is why we urge the committee to pass the Concrete Masonry Research, Education, and Promotion Act, H.R. 985. Thank you for your time. And I look forward to addressing your questions.

[The prepared statement of Mr. Waide follows:]

53

Testimony of

Ruby Concrete Company

submitted to the

U.S. House of Representatives

Committee on Energy and Commerce

Subcommittee on Commerce, Manufacturing and Trade

for its hearing on

“HR 985, Concrete Masonry Products Research, Education and Promotion Act of 2015”

held on

July 10, 2015

Kent Waide

President

On behalf of:

Ruby Concrete Company

134 Dempsey Street

Madisonville, KY 42431

<http://www.rubyconcrete.com/>

Good morning, it is a privilege to testify in front of this Subcommittee today on behalf of my company and others like mine. My name is Kent Waide and I represent Ruby Concrete Company of Madisonville, Kentucky. I believe our company is like many others within the concrete masonry industry. It began in 1869 and has been family operated for 146 years. We currently have three generations from our family working at Ruby Concrete Company, and our business is recognized as one of the oldest in Kentucky.

I am proud of the role our company has played in our region's history. We supplied the masonry products used to build our local schools, fire stations, home centers, grocery stores and other facilities that are used in our communities every day. We have also supplied public works projects including roads, bridges, courthouses and judicial centers. In addition, our products were used to build barracks for the 101st Airborne Division to house our troops at Fort Campbell.

We employ 16 people directly and create jobs both upstream from our vendors, and downstream to our customers. Our business is small, innovative, resourceful, and aggressive. During the construction recession, we reinvested our capital to create one of the most modern concrete products plants in the U.S.

The construction materials industry is changing, however. Companies like mine struggle to compete with other building materials that have different demographics. We welcome competition; but we seek a mechanism to level the playing field for our commodity industry.

If we manage our resources wisely, Ruby Concrete can invest in modern equipment and support our employees. But a company of my size simply does not have the resources to educate, research, and promote our commodity products throughout a broad-based market. We belong to associations that perform good work on our behalf. But I believe a commodity check-off program is necessary if we are to collectively invest more fairly and support growth that will benefit all of us in the industry.

Many of you know our product as a gray 'cinder block', but it is actually a very versatile design tool. Producers like me use a wide range of natural, manufactured, and recycled aggregates that are readily found throughout the country.

Concrete blocks are strong enough to support tall buildings and protect families from flying debris in hurricanes and tornados. They are non-combustible and prevent the spread of fires in buildings. They also survive forest fires.

Reinforced concrete masonry protects people and assets in earthquakes and wind events. It also shields against explosions and bullets, which is why our military uses concrete masonry to build mock cities in order to train soldiers in urban assault and terrorism defense.

Concrete masonry does not rot or mold, and is not subject to termites. It has terrific thermal mass properties that reduce the amount of insulation needed to meet energy codes. It

can be made in a rainbow of colors to allow creative designs that integrate texture, and imagination. Our company was commissioned by a university to produce a purple concrete block that was used to build a signature wall on their campus using their school colors.

These properties, design qualities, and uses resulted through many years of work, and testing. We have learned from each other and built on shared knowledge. But the old system of learning and communicating is ineffective in today's world. Technology, speed, and resources are necessary for our industry to advance, and we currently cannot keep up. We are losing ground, losing producers, and losing local jobs.

I have spoken with many concrete block producers across the country and we agree that our industry needs a new approach to support education, research that fosters new technologies, and broad-based promotion. Our industry will leverage the outcomes of these investments to support the construction of higher performance, more sustainable and cost effective building solutions. That is why we urge the Committee to pass the Concrete Masonry Research, Education, and Promotion Act, HR 985.

Thank you for your time and I look forward to addressing your questions.

Mr. BURGESS. The chair thanks the gentleman.

And that concludes the opening statements of our second panel.

I am going to yield to Mr. Guthrie first, 5 minutes for your questions, please.

Mr. GUTHRIE. Thank you, Mr. Chairman, for yielding. I appreciate that very much. I appreciate all three of you being here to testify, particularly Mr. Waide from our beloved Commonwealth. Welcome to Washington today.

My first question is for Mr. Ogilvie and Mr. Waide. Isn't it true that the bidding and building process associated with concrete masonry construction would limit the impact on the resulting costs of the building?

Mr. OGILVIE. I would agree with that statement, that between the building process or the bid process and other costs associated with building any structure would basically eliminate the assessment up charge. The assessment by design is designed to be so tiny as to not affect the overall cost of a building. And so we would not see that as a—

Mr. GUTHRIE. I will just ask you a follow-up and then you both can answer. I know that you have been active in D.C. quite a bit on this issue. So your customers obviously know you have been here talking about assessments on the industry and so forth. Has your customers reacted to this with concern like, Major, you are up there doing this; is it going to add cost to us? What are your customers saying about it is my question.

Mr. OGILVIE. They have. They recognize the need that our small industry has. And just like Kent was expanding on at the end of his testimony, we have got to do something for our industry to help transform it and get it into a modern technology that meets the marketplace needs. We absolutely have got to do that. Our customers recognize that. Our suppliers recognize that. We have enjoyed great support from both our suppliers and our masonry contractors coming up and telling our story to Members of Congress.

Mr. GUTHRIE. Thank you.

Mr. Waide?

Mr. WAIDE. Representative Guthrie, I would concur with Mr. Ogilvie in that it truly is recognized as a job bill in that our customers need support in the education and research of this commodity product so that they can continue to build their businesses, and we can work together to do that.

Mr. GUTHRIE. OK. In the text of the bill, we talk about funding research in your industry. Could either of you two elaborate on the kind of research that will be, that you envision would be used by the industry?

Mr. WAIDE. I would be glad to address that. One example is actually going on at the University of Louisville right now. And they have a center there that is focusing on the benefits of thermal mass which I addressed in my statement regarding energy codes. Concrete masonry has terrific thermal mass properties that when used correctly and designed correctly can create a much more environmentally friendly building. And with all the LEEDs credits that are being sought after in the design community, that could add to the benefits of the buildings today.

Mr. GUTHRIE. Do you have a comment on that, Mr. Ogilvie?

Mr. OGILVIE. Mine are for in the marketplace, Representative. We have needs to help our customers, the designers, the builders, the developers, realize the values of our products. One of those and some of the low-hanging fruit of investments we will make, design software in the marketplace today, this is an item that would be \$3 million, \$4 million, \$5 million to purchase and would take that amount to implement over the course of time. But during the outreach of our industry's effort, we have learned that software today is out of date. So one of the low-hanging investments we would make early on is investing in updating our software because we have found that in the marketplace, because we don't have updated software, the economics against our products are working against us in a pretty significant way.

Mr. GUTHRIE. I understand that construction practices are different throughout the country. We have a vast continental country. What you build in Florida, what you build in Birmingham, what you build in our mountains, it might be different if you are on the coast of Florida versus in our beautiful mountains. So how does this bill ensure that the funding raised will support local initiatives given that we have vast differences?

Mr. OGILVIE. Well, as it was pointed out a little bit earlier, in the act, in the bill, 50 percent of it has to be spent in the region that it is raised in. So that will guarantee that. In looking at the investment model we are putting together, the regional requests will be held first, followed by our state, regional, and national. They will be done in that order so as to give the state, the local area, the top priority for the best investment, which, in our business, states, the demographics of states are very important.

Mr. GUTHRIE. Thank you.

My time has expired. I yield back.

Thank you for your testimony.

Mr. BURGESS. The chair thanks the gentleman.

The gentleman yields back.

The chair recognizes Ms. Schakowsky for 5 minutes for questions please.

Ms. SCHAKOWSKY. I think people listening to this debate would wonder how much of taxpayer dollars are involved in this legislation. And so I wonder, Mr. Ogilvie, in promoting concrete blocks and promoting your industry, are there taxpayer dollars, or is the industry providing the funding for the promotion?

Mr. OGILVIE. Well, good question. First of all, as the legislation states, we are responsible for all the costs of the government, both administrative and personnel. We believe that the legislation, just because of the nature of our industry, meaning very concentrated in a local standpoint, will create additional economic activity, which will increase the tax revenue, both—for all layers of government, city, county, state and Federal. So we believe it will be a tax advantage, a tax increase as far as tax receipts go.

Ms. SCHAKOWSKY. I think that is really important for people to understand that the taxpayer is not on the hook for promoting your industry.

And, Ms. Offringa, do you see anything in this legislation that would prohibit yours from asking for the same kind of program?

Ms. OFFRINGA. No. I don't.

Ms. SCHAKOWSKY. So we actually have heard from a number of building material industries that they may want to seek that. I just, I think it is important also to make the point that this is not to the exclusion of, but it is focused on an industry that has done a lot of homework and a lot of organizing and a lot of thought into a piece of legislation. And we may very well see others that, that come forward.

Ms. OFFRINGA. I agree with you. Thank you.

Ms. SCHAKOWSKY. Actually, that is all I really have to say.

So I am going to yield back my time. Thank you.

Mr. BURGESS. The gentlelady yields back.

The chair thanks the gentlelady. The chair recognizes Mr. Harper from Mississippi, 5 minutes for questions please.

Mr. HARPER. Thank you, Mr. Chairman.

Thanks to each of you for being here. And, of course, Major Ogilvie, it is good to see you again and reflect on all the years I watched you as the all-American running back at Alabama, two national championships and two MVPs and lots of big plays and pretty special deal there. You will have to tell us some Bear Bryant stories later.

Hey, you'll remember the first time I saw you a couple years ago, I said, Number 42 right off the bat. So remember that. So we are glad to have each of you here.

Mr. OGILVIE. Thank you.

Mr. HARPER. Mr. Waide, how would you address concerns that the assessment will disproportionately impact smaller concrete masonry producers?

Mr. WAIDE. In disproportionately impacting them—

Mr. HARPER. Do you think there is a problem, there will be a problem for the smaller concrete masonry producers with this assessment? Do you think it is something that they will be able to manage?

Mr. WAIDE. Everyone will be able to manage this. The amounts that we are looking at as far as the assessment is concerned, as Mr. Ogilvie pointed out, is very small in relation to the product costs and/or price. So it is not onerous in any way.

Mr. HARPER. Thank you.

Ms. Offringa, if I could ask you a question, I am looking at your Web site, it lists all of your siding competitors to vinyl. I didn't see concrete masonry on that list. So why, today, is it a primary competition concern?

Ms. OFFRINGA. Thank you. That is a very good question. I appreciate the opportunity to clarify that. Our concern is that while this program is designed for concrete masonry and the product you see there, that the promotional efforts will spill over into general promotion of cement and cementitious products. And fiber cement cladding is a major competitive threat to vinyl siding. And a big concern of ours is the spillover effect where a program designed to promote concrete block could end up promoting concrete and other cementitious products generally speaking.

Mr. HARPER. If I could ask if either Mr. Waide or Mr. Ogilvie have a response or care to respond to that competition issue? Or shall I move on?

Mr. OGILVIE. I can speak specific. I can't speak to other potential checkoffs or checkoffs in general, I can only speak to ours. What our checkoff will cover, concrete masonry checkoff, concrete block. It would not relate with any, with competition within this industry if that was your question.

Mr. HARPER. OK. Thank you.

In the interest of time, Mr. Chairman, I am going to yield back.

Mr. BURGESS. The chair thanks the gentleman. The chair recognizes the gentlelady from Florida, Ms. Castor, 5 minutes for questions please.

Ms. CASTOR. I want to thank you, Mr. Chairman and Ranking Member Schakowsky for holding this hearing today. You are responding to local small businesses all across the country that oftentimes don't have a big voice here in Washington. So I want to thank you for taking the time for this committee hearing today. And I would also like to thank my colleague and cosponsor Brett Guthrie. He is a good friend. He has been a pleasure to work with on this bill and his staff as well. Representative Guthrie and I have introduced this bill together for the last two Congresses. And I am really pleased that we have garnered so much bipartisan support.

Last Congress, we had 267 cosponsors. And this year we already have 159 cosponsors, including almost 30 of our Energy and Commerce colleagues. This bill is an industry-driven bill that will give concrete masonry businesses the opportunity to decide whether or not they want to institute a commodity checkoff initiative. If approved, it allows the concrete block industry to assess itself to pay for research and advertising at no cost to taxpayers.

The concrete masonry industry is made up of primarily small, local businesses. Most block producers are small and local due to the huge weight of concrete block and the high cost of transportation. That is why they are so spread out all across the country. And virtually every congressional district is home to at least one producer and multiple masonry contractors.

One of the reasons this bill and this initiative got my attention is that we are seeing an increase in the number of extreme weather events all across the country. And in my home State of Florida and throughout the entire Gulf Coast, we are particularly sensitive to tropical storms and hurricanes. Mr. Ogilvie, you mentioned the tornadoes in Alabama. You don't have to look back in the news pages or news reports to see reports of fires, floods. And I think that promotion of this industry is very important to making sure our structures are sturdy, that they can withstand the increasing intensity of these extreme weather events. Mr. Ogilvie, can you elaborate on the role concrete masonry could play in creating a more resilient construction environment? And how could this bill allow the concrete industry to better research and advertise products that can better withstand volatile weather conditions?

Mr. OGILVIE. Thank you, Representative Castor.

That is a big subject for us that requires, particularly on the research and the education part, resilient construction and the benefits that it can. That is a gigantic play for this industry, one of the areas that we will work toward and continue to work toward with this concrete masonry checkoff program. Wind resistance is a true value of our product. It offers the highest wind resistance towards

tornadoes or hurricanes of products that are out there. And we will work more to not only conduct that research that will be required but also work within the colleges, the universities to educate the designers and the designers coming out in the marketplace to help us further resilient construction.

Ms. CASTOR. In my home state we have had a real crisis after the active hurricane season of 2004 relating to property insurance. And I also see this initiative as a benefit for homeowners and commercial property owners all across the country. If they have sturdier structures, over time, they are going to be able to access property insurance at more affordable levels.

Mr. WAIDE, do you have a comment on how we can promote resilience and stronger structures through this concrete checkoff initiative?

Mr. WAIDE. I think you have pointed out the major areas, not only through the building side but also through insurance and that type. But the biggest thing that this is going to do is allow us to innovate and create stronger properties in our product, as well as be able to communicate that to the design community and integrate that into standard building practices. We have manufactured concrete blocks in some ways the same way for a long, long time. But technology has advanced to the point where we want to take advantage of that. And we feel like if we can get the funding to be able to do the research and put that technology to work for our industry, we can create better products that create better buildings. And, in turn, it is better for the consumer and for all of us.

Ms. CASTOR. Thank you very much.

And thank you again, Mr. Chairman, for calling this hearing.

Mr. BURGESS. The chair thanks the gentlelady.

The gentlelady yields back.

The chair recognizes the gentlelady from Indiana, Mrs. Brooks, 5 minutes for questions please.

Mrs. BROOKS. Thank you Mr. Chairman. I am going to turn the attention back to the jobs in the industry.

And, Mr. Ogilvie, do you know how many jobs are supported by the concrete masonry products industry today roughly?

Mr. OGILVIE. Yes, ma'am. The Department of Commerce does not distinguish between brick and block when they do their census. And these are 2012 numbers. But there are roughly, within brick and block operations, about 15,000 to 18,000 were the numbers that we looked at and we can estimate. And that is 2012 numbers.

Mrs. BROOKS. And do you have any sense as to whether or not you expect the number to grow with the establishment of a checkoff program? How will a checkoff program assist with job creation?

Mr. OGILVIE. Yes, ma'am. Number one, this downturn, this recession has hit our industry particularly hard because we are family businesses and to strive through that has been particularly difficult. We don't have access to large public capital. But the recession is not going to fix the challenge, the transformation that we see as an industry we need. We need to modernize our industry, be able to get up to transform it with new innovations, as Kent said. But we need to be able to transform it, like I was sharing a little bit earlier, with design software that helps our product be more competitive in the marketplace but also bring it up to code

and allow us to change codes sooner than we have been able to do so in the past because the design codes, the design systems that are out there are penalizing our product in a wall system. This block is \$1.20, \$1.45 nationwide. And we are talking about a penny assessment and enough that will help us to put a design system that in the wall, this is anywhere from \$12 to \$15. We could save 100, 200 times that with updated design systems alone. Did that make sense?

Mrs. BROOKS. And thank you for bringing that block for demonstrative purposes today. It is helpful.

Mr. WAIDE, can you share with us what are the main challenges facing the growth of the concrete masonry industry today? What are kind of the biggest challenges that you see that will serve as obstacles, that do serve as obstacles, you know, to strengthen your position in the market?

Mr. WAIDE. Well, we have got a good product that is time tested. The problem that we face as producers is that I, individually, cannot put the resources in to innovate and research in ways to improve the product and put it in the marketplace today in a viable way. So that is why we seek the checkoff program so that we are not individually trying to do that, that we collectively, as an industry, can use technology for our benefit.

Mrs. BROOKS. Can you explain, though, how an improved product through R&D and through checkoff, can you explain how you believe that could increase job creation in the future and increase the strength of your industry and how we can connect those?

Mr. WAIDE. Again, through technology, I can learn how to build a better block. And in that process, I can communicate with designers who are seeking those better performing building products. And if they are looking at and specify that product, then I create jobs because I am feeding the building industry with what they are needing, what they are wanting.

Mrs. BROOKS. Thank you.

I yield back.

Mr. BURGESS. The chair thanks the gentlelady. The gentlelady yields back.

The chair recognizes the gentleman from Oklahoma, Mr. Mullin, 5 minutes for your questions please.

Mr. MULLIN. I was just fixing to tell Mrs. Brooks she was using some big fancy words to describe a cinderblock a while ago. I have absolutely busted out numerous of those and actually installed a lot of them too. And I do appreciate bringing a visual aid. That is what we call that.

Mrs. BROOKS. I am a lawyer.

Mr. MULLIN. That helps explain that. I know. We understand. I am a plumber.

Anyway, Ms. Offringa, I was wanting to kind of visit with you just a little bit. As a business owner, I mean, I have competition that enters in every day. We have companies ranging from plumbing all the way to banking and even a restaurant, which that is a whole animal in itself. And competition is something that comes in the market every single day. And as a business owner, if I am concerned that someone is going to get the competitive edge, it is not

that I go out and I try to keep that competitive edge from happening; I go out and make myself stronger.

So I am kind of more interested in your perspective on why we are trying to incentivize safety. What is a better product? What is a better way to do things? Is there a better option out there? How can we increase safety? How can we save money for the consumer? If your product is out there and it is able to compete, it is able to compete, but there is always going to be a need for your product. And so I guess I am kind of trying to get your point of view of how do you think this is going to put you at a negative disadvantage?

Ms. OFFRINGA. Thank you for your question.

We are not afraid of competition. That is what we do, the industry I represent, and keep doing it. And that is the American way.

But our position is that a government-backed checkoff program would appear to be a seal of approval on a particular type of product in the buildings industry and have spillover effect, as I said, to other types of cementitious products that—

Mr. MULLIN. But isn't that a far reach? You are assuming something that we don't even know. That is not even the point of this legislation.

Ms. OFFRINGA. Well, the position we are taking on it is they are free as an industry to do all those things, and they should do them. They should strengthen their industry and do R&D and promote their products. They should do them. And they are free to do them through their trade associations. And that is what we do.

Mr. MULLIN. But we have helped, as a government body, we have helped a lot of industries innovate. We have also hindered a lot too. I get that. But we, this is kind of a step that we try, we tried to, supposedly, create an atmosphere in Washington, D.C., which this is kind of counterproductive, but we are supposed to be creating an atmosphere for entrepreneurs to thrive, an opportunity for them to build, to succeed. Lately, through regulations, you have probably heard me rant on this before, we haven't. But this is one that we are.

And I understand where the association is taking a stand. But I am having a hard time agreeing because I have been in construction my whole life. This is something that I could understand a point of view if it wasn't just making an assumption. And you are assuming that this is going to put the industry at a negative advantage. But can you see the positive in it too?

Ms. OFFRINGA. Well, those are our concerns. We are happy to compete on a level playing field.

Mr. MULLIN. No, I am not saying, I am saying can you see the positives? You, personally, can you see the positives in this?

Ms. OFFRINGA. Of government-sponsored programs that—

Mr. MULLIN. No, I am talking about specifically what we are talking about here today.

Ms. OFFRINGA. I understand checkoff programs and what they accomplish in the agriculture industry. And I think there is a difference when you start to apply them to manufactured products. And that would be something new for the Department of Commerce. We have concerns about the impact and how it would work out. But if it is something that you decide to do, then we think that

lots of other industries are going to come ask you for the same thing.

Mr. MULLIN. Let me ask you, is there a way we can help your industry? Because I am all about creating an atmosphere for industries to thrive in. Is there a way that we can help your industry then?

Ms. OFFRINGA. Well, if this is a successful program, maybe we will be back next year and have a different conversation then about these types of promotional—

Mr. MULLIN. Which is my point. It is OK so often that we, that we help as long as we are helping me but not others. And if there was an opportunity that came along for us to help you, you would be OK with that. But what if these guys here want to oppose that? Do you understand my point? We are here to help. And we want to create an equal playing field. I am not wanting to pick winners and losers. So if an opportunity comes up, Ms. Offringa, come to my office. Let's see how we can work with you, OK?

Ms. OFFRINGA. Thank you.

Mr. MULLIN. Thank you. I yield back.

Mr. BURGESS. The chair thanks the gentleman.

And the chair will recognize himself for 5 minutes for questions.

And I do want to thank all of our members who have stayed with us this morning and heard from a very informative panel.

I want to thank Mr. Mullin for educating me about gas cans. Over the Fourth of July holiday, I had the opportunity to buy a new gas can and found that I was unable to work the new nozzle that is required by the CPSC. So when he referenced the fact that sometimes we actually work at cross purposes to the advancement of industry, I feel your pain or I felt your pain. So I got the nozzle off the old gas can that had a hole in it and switched out. And it just leaked a little bit. And I am sure I probably damaged the ozone layer more than the CPSC intended for me to.

Mr. Mullin, I wonder too if you would introduce your guest to the committee.

Mr. MULLIN. I am very privileged today to have my second oldest child, which I have five, my second oldest child would be Andrew. As adults, so often we get busy in our world, and we don't actually show our kids what we are doing. This job, as we all know, takes us away from our family all the time. And the last thing I want to do is have my kids grow up thinking this took me away from them. So I appreciate the chairman for allowing me to have him in the hearing today because if you ever want me see cry like a baby, get me talking about my kids.

Mr. BURGESS. It is so understood. I appreciate the opportunity to, perhaps, do that some day.

And, Mr. Mullin, I might further ask as we get to the conclusion of our hearing today, if Andrew would like to take the chair and adjourn the subcommittee as we conclude. That would allow him to actually participate in the hearing.

Before we get to that, though, I do have just a few observations. Ms. Offringa, it seems like I learned at a very young age from my mother that if you build a better mouse trap, the world will beat a path to your door. Was she correct about that? That we make a better product and people are going to want our product? If I un-

derstood your testimony correct, you are concerned that we may interfere with the mousetrap school of economics that was related to me by my mother. Am I understanding your concern correctly? We are talking about tilting the competitive advantage to a product that is not vinyl siding and doing that with a government program. I will be honest with you, I share that concern. I do have to wonder if that is the correct place and function for the Federal Government to be involved.

I guess the question I would have to the other witnesses is, what prevents a voluntary program? And, yes, you are free to take money from your members and use that to the advancement of your product. I guess the "trade association" was the term of art that is used. What prevents that from happening now? What is it about your industry that makes that not a viable strategy?

Mr. WAIDE. Thank you for the question. Our industry has worked for many years in trying to voluntarily put together innovation and advancements. The problem with our industry is that, as it has been well stated, there is a bunch of us that are spread out. And so it is hard to collaborate and get together, even through associations, to do that.

But, more importantly, the dollars that it takes in order to accomplish meaningful innovation and research is not something that we can do just individually or just a few of us. It needs to be a collaboration of all of us. And the checkoff program is well established, not necessarily in this department, but it is well established. And it meets the needs of other commodity industries. And we feel like we fit well within the guidelines of that.

Mr. BURGESS. Yes, sir. I'm sorry. Major, please.

Mr. OGILVIE. I am going to give you more of the history. First of all, we studied voluntary checkoff programs. I am going back to 2008, 2009. We studied grants. We actually came up here and met with a number of Congresses. But the seed was that we recognize as an industry we needed to be able to better fund, with all the transformation, all the needs going on in the construction industry, for concrete block to remain competitive and a viable product. So we studied those very quickly between grants and voluntary—voluntary can help you in a short-term issue, topic type thing. But in terms of the long-term need that our industry felt like we need to move our product into the future, we didn't feel like voluntary programs were an effective way to do that. That is based on the history and study of voluntary programs that have been in place.

Mr. BURGESS. And I appreciate that. And I get the fact that your industry is widely dispersed over geographic areas. Your products are heavy. They are hard to transport.

Mr. OGILVIE. Right.

Mr. BURGESS. But it also seems in the day of the Internet that some of those problems are, perhaps, manageable. And I don't know. These are just observations. I always worry about setting up a new government program. So I do share some of the concerns that were expressed today.

And, Ms. Offringa, you used the word "subsidy." And you heard me talk to our Commerce witness about the concern, if a subsidy could be seen as an unfair competitive advantage and whether that would get us into difficulties with the World Trade Organization.

I guess my only other observation is if we set up a checkoff program, I hope that Commerce is prepared to do the necessary oversight to make certain that other industries are not adversely affected and that certainly we remain in compliance with all of our obligations under the World Trade Organization.

Seeing that there are no further members wishing to ask questions, I do want to thank all of our witnesses for participation in today's hearing.

Before we conclude, I would like to include the following documents to be submitted for the record with unanimous consent: A statement for the record on behalf of the Mason Contractors Association of Greater Chicago; a statement for the record on behalf of Back Brook Masonry; a joint statement for the record on behalf of Featherlite Building Products and the Acme Brick Company; and a letter from the National Association of Homebuilders.

[The information appears at the conclusion of the hearing.]

Mr. BURGESS. Pursuant to committee rules, I will remind members that they have 10 business days to submit additional questions for the record. I ask the witnesses to submit their responses within 10 business days of receipt of the questions.

I do advise members that there is a vote on the floor.

Mr. Andrew Mullin, if you will take the chair and read the last sentence that I have underlined there and then strike that gavel very hard.

Mr. ANDREW MULLIN. Without objection, the subcommittee is adjourned.

[Whereupon, at 10:45 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Statement of

Mason Contractors Association of Greater Chicago

submitted to the

**U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing and Trade**

for its hearing on
“HR 985, Concrete Masonry Products Research, Education and Promotion Act of 2015”
held on

July 10, 2015

James O'Connor
Executive Secretary

On behalf of:

Mason Contractors Assoc. of Greater Chicago
1440 Renaissance Dr. #340
Park Ridge, IL 60068
847/ 824-0146
<http://www.chicagomasons.org/>

As the Executive Secretary of the Mason Contractors Association of Greater Chicago I would like to publicly express support for the Concrete Masonry Products Research, Education, and Promotion Act of 2015, HR 985. And I would like to submit this public expression in the form of a written statement to the House Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade for the purposes of their hearing on this legislation on July 10, 2015.

As you may know, Chicago has a rich masonry tradition – one that blossomed in the aftermath of the 1871 Great Chicago Fire when the risks of combustible construction in dense, populated areas became so abundantly clear. That masonry tradition continues today, but the ability to continue to promote the values of masonry construction in modern construction and the ability to support needed innovation has been greatly challenged by evolutions in construction markets. The continued accessibility of imported construction materials and the global consolidation of providers of construction materials have made it difficult for locally manufactured and installed products to compete.

The masonry industry has the ability to create so many more high-wage local jobs associated with the manufacturing, construction, material supply, and transportation industries. What is holding us back? I would argue that it is simply the demographics of the industry compared to that of competing industries. The players in concrete masonry products industry are simply too small, too local, and supply a product that is too “common” to enable them to allocate the resources needed to compete in today’s market. Are we asking for a “bailout” or federal subsidies or preferential consideration? No. HR 985 would merely provide this commodity industry (it’s hard to brand a concrete block!) access to a funding organization structure that Congress has already provided to other commodity industries – including other construction materials. A commodity check-off approach would merely give the industry a means of assessing themselves to fairly generate needed resources for research, education and promotion. I consider this a reasonable and minimal request.

The Chicago market is home to a great number of companies and organizations that are in support of this legislation. In addition to my organization, the following others in our area have expressed their support: the Masonry Advisory Council, the Illinois Concrete Products Association, and the Bricklayers and Allied Craftworkers Administrative Council #1 (covering nine northwest counties in Illinois). The members of these Chicago and Illinois-based organizations are continuing to experience first-hand the lingering effects of the construction recession and declining demands. Our local labor union reported that in 2014 we were staggeringly down 3.2 million bricklayer hours and down another 1.4 million laborer hours (the equivalent of over 3,000 full-time jobs), a decline of over 70% since 2003! Our local experience is not unique, but rather typical of other metropolitan areas. Thus, the support for this legislation of our Chicago organizations is similar to regional groups from across the U.S. as well as their related national organizations: the Mason Contractors Association of America, the International Union of Brick and Allied Craftworkers, the International Masonry Institute, and the National Concrete Masonry Association.

With the increasing threats to our communities and infrastructure from an increasing frequency of natural disasters, now should be the time for our industry to be ramping up to support American construction. To date, more than 200 top mayors and county leaders have signed the Resilient Communities for America Agreement to commit to building more resilient communities, ready to bounce back from extreme weather challenges. Concrete masonry has some clear advantages to support these leaders in creating a more resilience. It does not burn or rot. It is strong enough to resist tornados, earthquakes, and hurricanes. It can be used to build energy-efficient homes that are durable enough to stand for a century. But – these messages are not being adequately shared with those in a position to make informed decisions.

This legislation will give this industry that chance to compete on a level playing field. Please pass HR 985. Thank you.

69

Statement of

Back Brook Masonry

submitted to the

**U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing and Trade**

for its hearing on
“HR 985, Concrete Masonry Products Research, Education and Promotion Act of 2015”
held on

July 10, 2015

Michael Schmerbeck
President
Back Brook Masonry
239 Homestead Road, Unit 2
Hillsborough, New Jersey 08844
<http://www.backbrook.com>

My name is Michael Schmerbeck, and I am submitting this written statement in support of HR 985, the Concrete Masonry Products Research Education and Promotion Act of 2015. I am a founder and current President of Back Brook Masonry, headquartered in Hillsborough, NJ. Our firm provides professional contracting services relative to new construction, maintenance, and restoration of masonry structures. I have a Civil Engineering degree from Worcester Polytechnic Institute and personally have 30 years of experience in the masonry industry. I have been and remain an active industry advocate, serving in positions of leadership at the state and national levels including:

- President, Masonry Contractors of New Jersey
- Co-Chairman, National Board of Directors of the International Masonry Institute
- President, International Council of Employers
- Management Trustee, Bricklayer's New Jersey State Health Fund, Pension/Annuity Funds
- Management Trustee, Bricklayer's International Pension and Health Funds
- Management Chairperson, Bricklayer's International Union's Brick & Block Craft Committee

As a masonry contractor, our firm, like thousands of other contractor companies across the U.S., is a customer of the block manufacturer, purchasing their products to install into construction projects. My company, as well as the national organizations of which I am an active member (the Mason Contractors Association of America and the International Union of Brick and Allied Craftworkers), are on record as supporting this legislation and the creation of a commodity check-off program for concrete masonry. Why? Because I take great pride in the quality of construction that can be created with masonry, our employees take great pride in their craft, and our customers recognize the value that we can provide.

However, I also know that our industry primarily lacks an adequate voice to be able to promote that value. Today's architects and engineers rarely have room in their curriculum to learn how to design with and utilize masonry. That responsibility falls to our industry to provide that exposure to them in their continuing professional development while they are practicing. But we need more resources to accomplish that. And the masonry contractors are willing to share in the financial burden of supporting those efforts – provided that our increased level of support is shared appropriately by others as well.

One may question the financial impact of the industry self-assessment on the cost to the ultimate consumer. However, upon any analysis performed, the impact of the one penny assessment on the consumer is negligible. Consider a typical stand-alone drug-store found in most communities in New Jersey. There will be approximately 7,000 concrete block in one of these drug stores and at one penny per unit, the total check-off assessment on that building project would be only \$70 dollars. This is less than the cost of a single man-hour of labor. In

our New Jersey marketplace, the cost of the block material is about \$1.35 per square foot and the cost for field labor to install that block is about \$19 per square foot. Or more precisely, for every block manufactured \$19 dollars of labor wages are generated and you can be assured that these wages are being paid to a New Jersey resident working in or near his hometown. This is a good thing! And that single penny, when combined with other pennies on other projects may help us determine a methodology to use recycled materials in the manufacturing of the product or addressed a new method of increasing insulating characteristics of the wall system without compromising its strength and integrity – thus better protecting the environment, reducing energy cost and demand over 50 years or more of operating the building, and providing the needed strength to the structure to enable it to re-open quickly after a hurricane has passed through the area.

Hurricanes are something that we know a little bit more about in New Jersey now as a result of Hurricane Sandy. Our company was extensively involved in reconstruction efforts. I saw houses on the coast that remained safely intact while their neighbors' houses were all washed away around them. The difference was how the house was constructed and with what it was constructed. With this program we can promote and educate homeowners about the benefits of building right the first time.

And in New Jersey, we also now know a bit more now about building fires. The Avalon Bay apartment complex that burned completely to the ground on January 11 of this year was so massive that the blaze could be seen clear across the west side of Manhattan. The fire permanently displaced more than 500 residents and is bringing to the public's attention that while the building code may provide "minimum life safety", it may not be adequate to provide protection of one's home or livelihood. It will require research to demonstrate the false assumption that sprinklers are adequate enough to cover all levels of combustibility. And it will require education to help designers understand how they can provide better passive fire protection with better fire separation and containment strategies to complement active suppression provided by sprinklers. And it will take promotion efforts to share with the public that they have choices in how they build their homes and buildings.

Concrete masonry manufacturers must have the resources that will come from this checkoff opportunity in order to undertake these and other activities that will benefit the public and broaden the opportunities for good-paying jobs in the masonry industry. As an independent businessman, I firmly believe that a program that does not depend on government funding or management will best serve the needs of the masonry industry. We are asking that you give us a hand up, not a hand out.

Thank you for taking the time to consider this legislation that will simply enable our industry to better invest in itself so that we can better share the value of the strong, durable, and beautiful construction that masonry can offer.

Statement of

Featherlite Building Products

and

Acme Brick Company

submitted to the

**U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing and Trade**

for its hearing on

“HR 985, Concrete Masonry Products Research, Education and Promotion Act of 2015”
held on

July 10, 2015

Edwin Watson
Senior Vice President

On behalf of:

Acme Brick Company
3024 Acme Brick Plaza
Fort Worth, TX 76109-4104
<http://www.featherlitetexas.com/>
<http://www.brick.com/>

Please accept this communication as a written statement to the Committee in connection with its July 10, 2015 hearing of the Subcommittee on Manufacturing and Trade of the House Committee on Energy and Commerce, and the consideration of its members of HR 985, the Concrete Masonry Products Research, Education and Promotion Act of 2015.

My name is Ed Watson and I am a Senior Vice President of Acme Brick Company. We have manufacturing operations in eight states, including several throughout the state of Texas. A number of these operations are concrete block manufacturing facilities that conduct business under the name of Featherlite Building Products. The Featherlite Corporation was privately founded in 1949 as a manufacturer of lightweight expanded shale aggregate. In 1953, Featherlite began acquiring block plants and using their manufactured aggregate to produce lightweight block. Today, Featherlite operates six block plants and one concrete-mix bagging facility in Texas, and directly employs a total of 190 people. In 1976, Featherlite became a member of the Acme Brick family of companies. Within the industry of block manufacturers in this country, Featherlite would be considered one of the larger producers. While certainly one of the largest manufacturers in the Southwest, our footprint is primarily contained within the borders of the state of Texas.

We consider ourselves to be an aggressive and innovative company – a description that might seem odd for a company operating in a century-old industry in which the nondescript gray “cinder-block” is the enduring public image of our product. However, I believe that concrete masonry products can provide perfect contemporary solutions for urban, suburban, and rural environments. For example, school buildings still need to be a solid financial investment for school districts. Masonry provides the best durability to stand up to the wear and tear of daily use by students. Additionally, it can accomplish both the needed security and protection against the threats of crime and Mother Nature, while achieving stunning architectural statements, sustainability and energy-efficiency objectives.

While within my company we can rationalize investments for developing new products and local marketing without a program such as a commodity checkoff, we cannot fund the needed research, education and promotion of the commodity solution itself. While our company has the ability to hire capable people and to provide desirable benefits to our employees, I believe the current tax and regulatory burdens significantly impact our capability to increase production and add jobs. However, I do not view the impact of an assessment on every concrete block that we would sell under the checkoff program in the same light. This would be an industry-funded “investment” that would help grow our business.

Although this investment would also help other concrete block manufacturers with whom we compete on a daily basis, our industry would be investing fairly and collectively. This investment would provide a more robust foundation for our industry to re-gain markets and jobs lost during the recession of the construction market. It would help to increase demand for

concrete masonry, thereby allowing idle capacity to be brought back on line and to avoid permanent closure of plants such as the one Featherlite closed in 2013.

Acme Brick and Featherlite are active members of the Texas Masonry Council, consisting of companies that provide a wide range of masonry products and services, including the masonry contractors that build with our product. This council supports numerous projects including the education of architects, engineers and construction managers at several of the great universities in our state. We are, however, limited in our ability to support needed education of these future professionals, and research within these institutions of learning. In the late 1980's a number of our universities were involved in a multi-year cooperative US-Japan earthquake engineering research project. That program cultivated numerous masonry experts that advanced masonry design for the next several decades. With funding for government institutions such as the National Science Foundation being slashed, it likely falls to industry to fund and develop this next generation of leaders through our own research and education efforts. Groups in our state, such as the Texas Masonry Council, the masonry contractor associations and other concrete block manufacturers, are firmly in support of this initiative. This legislation simply allows us the ability to better generate promotional funds from block-manufacturing companies, such as Featherlite, to finance these initiatives.

Please help us move HR 985 through the Energy and Commerce Committee and through the House. It will enable our industry to create valuable jobs, to leverage the existing excess manufacturing capacity that still remains following the construction recession, and to create better buildings for our communities.

Thank you.


National Association of Home Builders

1201 15th Street NW
Washington, DC 20005

T 800 368 5242
F 202 266 8400

www.nahb.org

July 9, 2015

The Honorable Michael Burgess
Chairman
Subcommittee on Commerce, Manufacturing and Trade
Energy and Commerce Committee
U.S. House of Representatives
2336 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Burgess:

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I am writing to express our concerns with H.R. 985, the *Concrete Masonry Products Research, Education, and Promotion Act of 2015*. NAHB believes H.R. 985 will harm housing affordability by artificially raising concrete prices and also create a government incentive to promote a specific building material at the expense of others.

H.R. 985 would establish a check-off program for concrete masonry products, a common building material in residential construction. According to NAHB research, concrete prices account for 9.5% of the cost of construction of a home.

Check-off programs are commodity research and promotion programs used to support the overall production and sales of a particular commodity or good. These programs are financed by producers of the commodity through the payment of a mandatory assessment that in essence functions as a tax where the revenue is directed to a specific activity.

NAHB is particularly concerned that the concrete tax contained in H.R. 985 will be passed along to consumers, which will in turn artificially raise the cost of a home. A 2014 study by NAHB shows that for every \$1,000 increase in the price of a home, 206,269 households will be priced-out of mortgage eligibility for a 30-year, fixed-rate mortgage with a 5% interest rate.

Finally, NAHB is concerned that if Congress permits the U.S. Department of Commerce to manage any check off program, the government will be engaged in picking winners and losers in the building product industry. Should Congress provide for a concrete check-off program, it will not be long before other industries urge for congressional intervention in the market.

Because housing has been a critical stabilizing factor in our nation's faltering economy, it is imperative that our government does not act to raise the cost of housing through artificial price increases. We respectfully urge you to oppose this backdoor concrete tax.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Tobin III".

James W. Tobin III

Government Affairs

James W. Tobin III
Senior Vice President & Chief Lobbyist